TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 302. 72

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

JAMES L. MORGAN ET AL.

No. 304. 73

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

SCHUYLER L. PARSONS.

No. 303. 74

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

ALFRED S. MALCOLMSON.

No. 303. 75

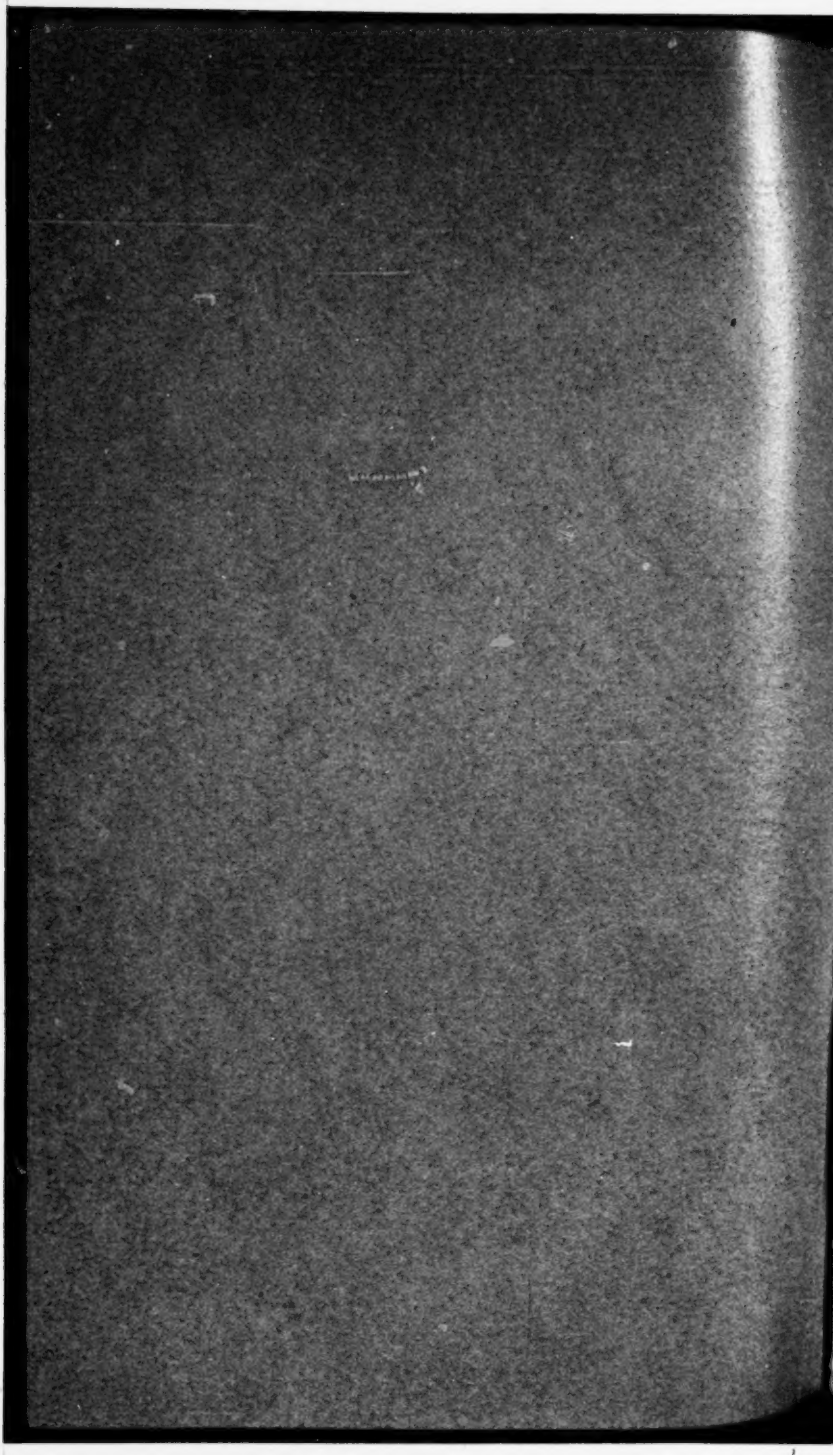
THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

JOHN MUNROE ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRITS OF CERTIORARI FILED MAY 26, 1900.—PETITION FOR CROSS-WRITS OF CERTIORARI FILED NOVEMBER 12, 1900.



(17,785, 17,786, 17,787, and 17,788.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 300.

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

JAMES L. MORGAN ET AL.

No. 301.

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

SCHUYLER L. PARSONS.

No. 302.

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

ALFRED S. MALCOLMSON.

No. 303.

THE STEAMSHIP "STYRIA," ANTONIO G. SCOPINICH, CLAIMANT, PETITIONER,

vs.

JOHN MUNROE ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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UNITED STATES DISTRICT COURT, [1]

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN *et al.*,
Libellant-Appellants,

AGAINST

The Steamship "STYRIA," her engines, &c.,
Respondent-Appellee. [2]

SCHUYLER L. PARSONS,
Libellant-Appellant,

AGAINST

The Same. [3]

ALFRED S. MALCOLMSON,
Libellant-Appellant,

AGAINST

The Same.

JOHN MUNROE *et al.*,
Libellant-Appellants, [4]

AGAINST

The Same.

5 AUSTRO-AMERICANA STEAMSHIP COMPANY owners of the Steamships "STYRIA" and "ABBAZIA,"
Libellant-Appellant,

AGAINST

3250 Cantors of Brimstone owned by JAMES L. MORGAN & Co.,
Respondent-Appellee.

6

Same,
Libellant-Appellant,

vs.

4550 Cantors of Brimstone owned by SCHUYLER L. PARSONS,
Respondent-Appellee.

7

Same,
Libellant-Appellant,

vs.

1500 tons of Brimstone owned by ALFRED S. MALCOLMSON,
Respondent-Appellee.

8

Same,
Libellant-Appellant,

vs.

100 tons of Brimstone owned by JOHN MUNROE & Co.,
Respondent-Appellee.

STATEMENT.

1898.

June 4. Libel of J. L. Morgan filed.

Dec. 1. Answer therein filed.

June 6. Libel of Schuyler L. Parsons filed.

Dec. 1. Answer therein filed.

June 4. Libel of Alfred S. Malcolmson filed.

Dec. 1. Answer therein filed.

June 7. Libel of John Munroe *et al.* filed.

Dec. 1. Answer therein filed.

Oct. 1. Libel Austro-Americana Steamship Company against 3250 Cantors of Brimstone owned by J L. Morgan *et al.* filed.

1899.

Feb. 15. Answer therein filed.

1898.

Oct. 1. Libel of Same *v.* 45 0 Cantors of Brimstone. Parsons owner, filed.

Dec. 31. Answer therein filed.

Oct. 1. Libel of Same against 1500 tons of Brimstone, Malcolmson, owner, filed.

Oct. 8. Answer therein filed.

Oct. 1. Libel of Same *v.* 100 tons of Brimstone, Munroe *et al.* owners, filed.

1899.

Jan. 9. Answer therein filed.

Feb. 14. Cause tried before Hon. Addison Brown, U. S. District Judge.

Apl. 5. Causes decided. The four several libels of the Austro-Americana S. S. Company dismissed with costs. Decree for damages in favor of libellants Morgan, Parsons, Malcolmson and Munroe respectively, with interlocutory decrees and orders of reference to ascertain damage.

June 30. Commissioner's report in suit of Morgan filed.

Aug. 31, do in suit of Parsons.

" " do in suit of Malcolmson.

Oct. 9. do in suit of Munroe.

13 June 30. Libellant's exceptions to Commissioner's report in suit of Morgan filed.
Jul. 5. Claimant's do filed.
Sept. 8. Libellant's exceptions to Commissioner's report in suit of Parsons filed.
" 9. Claimant's do filed.
Aug. 31. Libellant's exceptions to Commissioner's report in suit of Malcolmson filed.
Sept. 9. Claimant's do filed.
Oct. 9. Libellant's exceptions to Commissioner's
14 report in suit of Munroe filed.
" 11. Claimant's do filed.
July 7. Opinion by Brown, J., on foregoing exceptions filed. Report confirmed.
Aug. 5. Final decree in suit of Morgan filed.
Oct. 4. do. Parsons.
" 9. do. Malcolmson.
" 27. do Monroe.
1899.
Apl. 22. Libellant's notice of appeal in suit of Aus-
15 tro-Americana S. S. Company *v.* 3250 Cantors Brimstone, Morgan owner, filed.
Oct. 11. do. 4550 Cantors, Parsons owner.
Oct. 12. do. 1500 tons, Malcolmson owner.
Oct. 30. do. 100 tons, Munroe owner.
Jul. 28. do. Morgan *et al. v.* S. S. *Styria.*
Oct. 12. do. Parsons *v.* Same.
Oct. 12. do. Malcolmson *v.* Same.
Nov. 1. do. Munroe *v.* Same.
Jul. 29. Claimant's Notice of Appeal, Morgan *v.* S.
16 S. *Styria*, filed.
Oct. 10. do. Parsons *v.* Same.
Oct. 11. do. Malcolmson *v.* Same.
Oct. 30. do. Munroe *v.* Same.
Oct. 12. Libellant's Assignment of Errors in Austro-Americana S. S. Co. *v.* 3250 Cantors, Morgan owner, filed.
Oct. 12. Same *v.* 4550 Cantors, Parsons owner.
Oct. 12. Same *v.* 1500 tons, Malcolmson owner.
Oct. 30. Same *v.* 100 tons, Munroe owner.

Aug. 16. Libellant's Assignment of Errors, Morgan *et al. v.* S. S. *Styria*, filed. 17
Oct. 13. do. Parsons *v.* Same.
Oct. 13. do. Malcolmson *v.* Same.
Nov. 1. do. Munroe *v.* Same.
Oct. 12. Claimant's Assignment of Errors, Morgan *v.* S. S. *Styria*, filed.
Oct. 12. do. Parsons *v.* Same.
Oct. 12. do. Malcolmson *v.* Same.
Oct. 30. do Munroe *v.* Same

18

To the Hon. Addison Brown, Judge of the District Court of the United States for the Southern District of New York:

The libel of James L. Morgan, John M. Goetchius, James L. Morgan, Jr., Henry K. Goetchius and Lancaster Morgan, against the steamship *Styria*, in a cause of contract, civil and maritime, alleges as follows:

First—The libellants were at the time hereinafter 19
mentioned and are merchants now doing business in the City of New York, as copartners, under the firm name of James L. Morgan & Company.

Second—On or about the 23rd day of April, 1898, John Sofio and Company shipped on board said steamship, then lying in the port of Girgenti and bound for the port of New York, in good order and condition, 3,250 Sicilian cantars of crude brimstone, best third, Licati quality. Said brimstone was the property of 20
the libellants. The master of said vessel executed and delivered a bill of lading for said brimstone, to which the libellants beg leave to refer and make a part of this their libel, whereby, among other things, it was agreed that said brimstone was to be delivered at the port of New York in the like good order and condition unto Messrs. Brown Brothers & Company, or to his or their assign, on payment of an agreed freight.

Third—Instead of proceeding to New York and making delivery of said brimstone, as agreed to, the

21 libellants, who were the owners thereof, said steamship, as the libellants are informed, discharged said brimstone at the port of Empedocle, Girgenti, and proceeded without said cargo to the port of New York, where she arrived on or about June 3rd, 1898, and now is within the jurisdiction of this Court.

FOURTH—By reason of the matters aforesaid, the libellants have sustained damages in the sum of $5,000, no part of which has been paid, although payment
22 thereof has been duly demanded.

FIFTH—All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form may issue against said steamship *Styria*, her engines, etc., and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that said steamship may be condemned
23 and sold to satisfy the claim of the libellants, with interest and costs.

JAMES L. MORGAN, JR.

Sworn to before me this 2nd day of June, 1898, by James L. Morgan, Jr.

HULBERT TEN EYCK BEARDSLEY,
[SEAL.] Notary Public,
N. Y. Co.

24 [Endorsed:]—Libel.—Filed June 4, 1898.—Cowen, Wing, Putnam & Burlingham, Proctors for Libellants.

To the Honorable Addison Brown, United States District Judge, for the Southern District of New York: 25

The answer of Antonio G. Scopinich, claimant of the steamship *Styria* to the libel of James L. Morgan, John M. Goetchius, James L. Morgan, Jr., Henry K. Goetchius and Lancaster Morgan against the said steamship, in a cause of contract, civil and maritime, alleges as follows:

26

First.—He admits the matters alleged in the first article of the libel.

Second.—He admits that on or before the 23rd of April, 1898, John Sofio & Co. shipped on board said steamship, then lying in the port af Girgenti, and bound for the port of New York, a quantity of brimstone, otherwise known as "sulphur," said to weigh 3,250 Sicilian cantars, and to be best thirds, Licata quality, and that the master of said vessel executed and delivered a bill of lading, to which the claimant 27 begs leave to refer and to make a part of this answer, whereby, amongst other things, it was agreed that said brimstone should be delivered at the port of New York, or as near thereto as the steamer could safely get with the said cargo, unto the order of Brown Brothers & Co., on payment of the agreed freight, and upon the other terms and conditions expressed in the said contract.

He denies any knowledge or information sufficient to form a belief as to the other matters alleged in the 28 second article of the libel.

Third.—He admits that the steamship afterwards sailed and proceeded to the port of New York, arriving on or about the 3rd day of June, 1898, but did not then and there deliver the said sulphur unto the libellants.

He denies any knowledge or information sufficient to form a belief, with regard to the other matters alleged in the third article of the libel. He further

says that by reason of the outbreak of war between Spain and the United States, and the declaration of the Government of Spain that sulphur was contraband of war, it became, in his judgment, unsafe to transport the said cargo past the coast of Spain and through the Straits of Gibraltar to New York, and that, accordingly, he re-landed and stored the cargo at the port of shipment, on due notice to the shippers, and that he was justified, under the circumstances, in so doing.

FOURTH.—Upon information and belief, he denies the matters alleged in the fourth article of the libel.

FIFTH.—He admits the jurdisiction, but denies the other matters alleged in the fifth article of the libel.

SIXTH.—Further answering the said libel, and for a further and separate defense thereto, claimant alleges as follows:

(1.) That the bill of lading under which the said brimstone, otherwise called "sulphur," was carried, provided that it was to be delivered "at the aforesaid port of New York, or so near thereunto as she may safely get, the Act of God * * * restraints of Princes and Rulers or People * * * excepted. * * * In case of blockade or interdict of the port of discharge, or if without such blockade or interdict, the Master shall consider it unsafe, for any reason, to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe, at shipper's risk and expense; and on the goods being placed in charge of any mercantile agent or of British Consul, and a letter being put into the post-office addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the Master and owners discharged from all responsibility."

(2.) The loading of the said sulphur on board the

Styria was completed, and bills of lading therefor had been signed, on or before the 24th of April, 1898, the Master being ignorant up to that time that a state of war existed between the United States and Spain, but, in fact, on the 23rd of April, 1898, the Queen Regent of Spain had promulgated a royal decree, a copy of which is hereto annexed marked Exhibit "A" and made a part hereof, announcing that a state of war existed between Spain and the United States; that Spain intended to observe the principle that a neutral flag covers the enemy's goods, except contraband of war; that the Spanish Government proposed to organize a service of auxiliary cruisers of the Navy, for the purpose of cruising in co-operation with regular ships of war, and further providing that in order to confiscate the enemy's merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary cruisers and privateers, if and when authorized, would exercise the right of visit on the high seas and in the territorial waters of the enemy, and defined contraband as follows:

"ART. VI.—Under the denomination contraband of war, the following articles are included:

"Cannons, machine guns, mortars, guns, all kinds of arms and fire arms, bullets, bombs, grenades, fuzes, cartridges, matches, powder, *sulphur*, saltpetre, dynamite, and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construction, repair and arming of warships, and in general all warlike instruments, utensils, tools and other articles, and whatever may hereafter be determined to be contraband."

A formal declaration of war by the United States was also published on April 25th, 1898, but acts of war had been committed theretofore, and the declaration itself announced that a state of war had existed from and including April 21st, 1898.

On learning of the existence of war, and sulphur

had beendeclared contraband by the Spanish Government, the Master being informed that Spanish ships of war were cruising along the Spanish coast and in the Straits of Gibraltar, directly in the course of his intended voyage towards the port of New York, concluded it would be unsafe to carry the cargo to destination, and, therefore, determined to re land and store it at the port of Girgenti, in accordance with the above-quoted provision of the bill of lading.

The work of unloading and storing the cargo was begun on April 27th, and was completed at noon on the 7th of May, 1898.

All of the said sulphur was stored in the warehouse of Xenobio Urso, a qualified storekeeper at that port, and placed in charge of a mercantile agent named William Peirce. Letters were put into the Post Office, addressed to the shippers and consignees, stating that the goods had been landed on account of the war, and informing them of the place and circumstances of the deposit, and thereupon, as the claimant is informed and believes, the goods became and were at the shippers' risk and expense, and that the Master and owners were discharged from all responsibility therefor, by virtue of the above quoted clause in the bill of lading.

(3.) The course of the vessel on her voyage towards New York lay along the coast and by the lighthouses of Spain, and the presence of her naval vessels in her coast waters and in the Straits of Gibraltar, created a liability to capture, which amounted, or which the Master was justified in believing amounted to a restraint of princes and rulers or people, within the sense of that exception in the bill of lading.

(4.) The bill of lading further provided as follows:

"The shipowner is not to be liable for any damage to any goods which are capable of being covered by insurance."

The claimant is informed and believes that any loss

or damage which the libellants may have suffered in 41
the premises, was capable of being covered by insurance, and that, accordingly, under the aforesaid clause, the owners of the goods must be deemed to have assumed the risk of such loss or damage, and to have released the shipowner from all claim therefor, having recourse to insurance for their protection.

(5.) The bill of lading further provides:

"The shipowner is not to be liable * * * in any case for more than the invoice or declared value of 42
the goods, whichever shall be least."

The claimant avers that during the months of August and September, 1898, be brought forward the said sulphur in another vessel belonging to the same owners, under the terms of a stipulation with the libellants, a copy of which is hereto annexed, marked Exhibit "B" and made a part hereof, and delivered the same to the libellants at the port of New York, who duly accepted the same.

He is informed and believes that libellants have realized by the sale of the said sulphur, more than its 43
invoice price, and that, accordingly, under the above-quoted provision of the bill of lading, the libellants have not suffered any damages in the premises which are recoverable in this action.

(6.) Upon information and belief, the claimant alleges that by the Italian law which prevailed at the port of shipment, either party to a contract of carriage can withdraw from it without being liable for 44
damages when, before the vessel has left the jurisdiction, war has been declared, in consequence of which the vessel or the goods to be shipped according to the contract of affreightment can no longer be considered free, and would be liable to risk of capture.

In consequence of the declaration of war, and of the royal proclamation hereinbefore referred to, the cargo of the *Styria* could no longer be considered free, and was liable to risk of capture. The claimant, accordingly, was justified, under Italian law,

45 in withdrawing from the contract and re-landing and storing the cargo at the risk of and for the account of the shippers, and said vessel is not liable in damages for the acts of the master in so doing.

SEVENTH.—All and singular the premises of this answer are true.

Wherefore the claimant prays that the said libel may be dismissed with costs, or that such other decree may be made as the justice of the cause may require.

46

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

E. B. CONVERS, being duly sworn, says that he is one of the proctors for the claimant herein, and that the foregoing answer is true to the best of his knowledge, information and belief, derived from communi-
47 cations received from the owners of the vessel and their agents, and from the testimony of the master herein.

Deponent further says that the reason why this answer is not verified by the claimant is that he is absent from the United States.

E. B. CONVERS.

Sworn to before me this }
1st day of December, 1898. }

JAMES T. KILBRETH,
48 [SEAL.] Notary Public,
New York County.

Exhibit "A."

ROYAL DECREE.

In accordance with the advice of my Council of Ministers, in the name of my son, King Alfonso XIII, and as Queen Regent of the Kingdom,

I decree as follows:

ART. I.—The state of war existing between Spain and the United States terminates the Treaty of Peace and Friendship of the 27th October, 1795, the Protocol of the 12th January, 1877, and all other agreements, compacts, and conventions that have been in force up to the present between the two countries.

ART. II.—A term of five days from the date of the publication of the present Royal Decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart.

ART. III.—Notwithstanding that Spain is not bound by the Declaration signed in Paris on the 16th April, 1856, as she expressly stated her wish not to adhere to it, my Government, guided by the principles of international law, intends to observe and hereby orders that the following regulations for maritime law be observed:

(*a.*) A neutral flag covers the enemy's goods, except contraband of war.

(*b.*) Neutral goods, except contraband of war, are not liable to confiscation under the enemy's flag.

(*c.*) A blockade to be binding must be effective; that is to say, maintained with a sufficient force to actually prevent access to the enemy's coast.

ART. IV.—The Spanish Government, while maintaining their right to issue letters of marque, which they expressly reserved in their note of the 16th May, 1857, in reply to the request of France for the adhesion of Spain to the Declaration of Paris relative to Maritime Law, will organize for the present a service

of "Auxiliary Cruisers of the Navy," composed of ships of the Spanish Mercantile Navy, which will co-operate with the latter for the purposes of cruising, and which will be subject to the statutes and jurisdiction of the navy.

ART. V.—In order to capture the enemy's ships, to confiscate the enemy's merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary crusers, and privateers, if and when the latter are authorized, will exercise the right of visit on the high seas and in the territorial waters of the enemy, in accordance with international law and any regulations which may be publlshed for the purpose.

ART. VI.—Under the denomination contraband of war, the following articles are included:

Cannons, machine-guns, mortars, guns, all kinds of arms and fire-arms, bullets, bombs, grenades, fuzes, cartridges, matches, powder, sulphur, saltpetre, dynamite, and every kind of explosives, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construction, repair and arming of war-ships, and in general all warlike instruments, utensils, tools, and other articles, and whatever may hereafter be determined to be contraband.

ART. VII.—Captains, Commanders and officers of non-American vessels or of vessels manned as to one-third by other than American citizens, captured while committing acts of war against Spain, will be treated as pirates, with all the rigor of the law, although provided with a license issued by the Republic of the United States.

ART. VIII.—The Minister of State and the Minister of Marine are charged to see the fulfilment of the present Royal Decree and to give the orders necessary for its execution.

MARIA CRISTINA.

Madrid, April 23, 1898.

Exhibit "B."

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MALCOLMSON *et al.*

AGAINST

The Steamship "STYRIA," etc.

MORGAN *et al.*

AGAINST

The Same.

PARSONS *et al.*

AGAINST

The Same.

MONROE *et al.*

AGAINST

The Same.

It is stipulated and agreed between the parties as follows:

1. The claimant shall forward the cargo landed *ex Styria*, at Port Empedocle, on the first available steamer from that port to New York, and shall deliver the same to the consignees, upon the terms and for the freight specified in the original bills of lading, the consignees to receive the same and to pay the agreed freight on right and true delivery; the goods upon

61 arrival to be sold at current market rates, and the proceeds, less charges incurred, to be credited on account of the damages, if any, recovered in these cases by the libellants.

2. The claimant shall have a lien on the portions of the cargo to be delivered to the several libellants for the respective amounts of the charges against the respective portions of the brimstone in Sicily, provided the claimant was justified in re-landing and storing the
62 cargo at Fort Empedocle as and when he did. If it be held that the re-landing and storage of the cargo was not justified, then the said brimstone shall be free from any lien on account of the aforesaid charges or expenses, except freight, which is provided for in paragraph first of this stipulation.

It is the purpose and intent of this paragraph of the stipulation, to provide that if the claimant was justified in re-landing and storing the cargo as and when he did, he shall have a lien upon the respective con-
63 signments for their respective proportions of the charges and expenses against the same, which the libellants would have had to pay (exclusive of the charges provided for in the first paragraph of this stipulation), if they undertook to forward the cargo for heir own account.

3. This stipulation and anything done by any party under it, shall be deemed to be wholly without prejudice in the pending suits, except as herein provided.

New York, August 12th, 1898.

64 SULLIVAN & CROMWELL,
Proctors for Malcolmson *et al.*
COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Morgan *et al.*
BOWERS & SANDS,
Proctors for Parsons *et al.*
STERN & RUSHMORE,
Proctors for Munroe *et al.*
CONVERS & KIRLIN,
Proctors for Steamship *Styria*.

[Endorsed:] —Answer filed, Dec. 1, 1898.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York: 65

The libel of Schuyler L. Parsons, of the City of New York, merchant, lawfully doing business therein according to the statute in such case made and provided, under the firm name of Parsons & Petit against the Steamship *Styria*, whereof A. G. Scopinich was and is master, her tackle, apparel and furniture, engines, boilers, etc., and all persons intervening for their 66
interests therein in a cause or contract civil and maritime, alleges as follows:

I.—That on or about the 21st day of April, 1898, Ferdinand Baller & Company of Messina, Sicily, in the Kingdom of Italy, shipped on board the said steamship then lying in the Port of Girgenti, in the Kingdom of Italy, and bound to the Port of New York, in good order and well-conditioned, to be carried and transported in said steamship to the Port of New York and 67
delivered to the order of Hambro, 3250 cantars of crude brimstone in bulk, in like good order for the freight of six shillings per ton of 2000 pounds as delivered and average accustomed, to be paid by the libellant and the said Ferdinand Baller & Company receiving thereon from the said master three bills of lading, receipts and contracts, all of even tenor and date, one of which being accomplished, the other to stand void, whereby and wherein the said master charged his body and goods and also the said vessel, 68
her tackle, apparel and furniture for the performance of the said contract, a copy of which is hereto annexed.

II.—That at the same time and place aforesaid the said Ferdinand Baller & Company shipped on board the said steamship consigned to order 1300 cantars of crude brimstone in bulk to be carried as aforesaid for the freight of 7 shillings and 6d. per ton of 2000 pounds delivered and the said Ferdinand Baller & Com-

69 pany receiving therefor from the said master three bills of lading, also as above, a full copy of which is not hereto annexed, but is in the same form as that referred to in the last preceding paragraph, except as to the rate of freight and amount of goods shipped and that the said bill of lading is drawn to order in blank.

III.—That thereafter for value received the said Hambro, to wit, meaning thereby the banking firm of C. J. Hambro & Son, of London, England, duly en-
70 dorsed the first of said bills of lading in blank, and the said Ferdinand Baller duly endorsed the second of said bills of lading in blank, and the same were thereupon delivered to the libellant who became the lawful owner and holder thereof.

IV.—That the said steamship sailed from the said port of Girgenti for the port of New York where she arrived on the 3rd day of June, 1898, and now is, but notwirhstanding the libellant has been at all times
71 ready and willing and still is ready and willing to receive the said merchandise in good order and on so receiving the same to pay the freight thereon, yet the said master has not delivered the said merchandise to the libellant.

V..—That the libellant has demanded of the master of said vessel delivery of the said goods, tendering him the said bills of lading and also all the lawful charges thereon for freight and otherwise, but the said master has neglected and refused to deliver the said goods and
72 has converted the same to his own use, whereby the libellants has sustained damages to the amount of the value of the said goods, to wit, the sum of 11,200 dollars and interest thereon from the 21st day of April, 1898.

VI.—That the said steamship is a foreign vessel and is now soon to leave this port and the United States, and the said master has refused and refuses to pay said damage or deliver such merchandise so that the libellant will be without remedy, unless by proceed-

ings against said vessel, her tackle, apparel, furniture, 73
boilers and engines.

VII.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law according to the course of this Court in case of admiralty and maritime jurisdiction may issue against the said master and against the said steamship, her tackle, apparel, furniture, engines and boilers, and that 74
all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

75

BOWER & SANDS,
Proctors for Libellants,
31 Nassau Street,
N. Y. City.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
City of New York,

SCHUYLER L. PARSONS, being duly sworn, says that he is the libellant named in the foregoing libel; that he has read the same and knows the contents thereof, 76
and that the same is true according to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that, as to those matters, he believes it to be true.

SCHUYLER L. PARSONS.

Sworn to before me this 6th day of June, 1898.

WILLIAM C. BOWERS,
Notary Public,
N. Y. Co.

77 Shipped in apparent good order and condition, by Ferd. Baller & Co. in and upon the steamship called the *Styria*, whereof A. G. Scopinich is master for this present voyage, and now lying in the port of Girgenti and bound for New York with liberty to call at any port or ports, in any rotation in the Mediterranean, Adriatic and adjacent seas, or on the coasts of Spain or Portugal or in the Azores, or in North America for the purpose of receiving and delivering coals, cargo or passengers, or for any other purpose whatsoever; to sail
78 with or without pilots; to tow and assist vessels in all situations, although deviating thereby from the voyage and to carry goods of all kinds, dangerous or otherwise, and with liberty to tranship any part of the cargo by steamer.

Crs. 3,250 crude brimstone best seconds unmixed in bulk.

Say cantars three thousand two hundred and fifty. Said to be marked and numbered as per margin, and to be delivered from the ship's deck, where the ship's
79 responsibility shall cease, in the like good order and condition, at the aforesaid port of New York or so near thereunto as she may safely get, the act of God, the Queen's enemies, pirates, robbers by land or sea, jettison, thieves, vermin, barratry of master or mariners, restraints of princes and rulers or people, loss or damage resulting from any of the following perils, whether arising from the negligence, default, or error in judgment of the pilot, master, mariners, engineers, stevedore, or other persons in the service of the ship or
80 any other ship or ships belonging to or sailing under the flag of the company or otherwise, namely: Risk of literage to or from the vessel, or of craft or hulk or transshipment, explosion, heat, or fire at sea, in craft or hulk, or on shore, bursting of boilers, unseaworthiness arising from breakage of shafts or any latent defect in hull, machinery or appurtenances, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, straining, or other perils of the seas, rivers, navigation or land, transit of whatever nature

or kind soever and howsoever caused, excepted, with 81
liberty (in event of steamer putting back to this or into any other port, or otherwise being prevented from any cause from commencing or proceeding in the ordinary course of her voyage) to ship or tranship the goods by any other steamer, and with liberty to proceed under sail or in tow of any other manner which the ship's owner may think fit, unto

order Hambro,

or to his or their assign, he or they paying freight, the shipper also remaining liable for the same, for the en- 82
tire quantity of goods therein enumerated, whether delivered sound or unsound, in cash, free of interest, on the ship's delivery, at and after the rate of six shillings and pence British sterling in full per ton of 20 cwt. delivered with per cent. primage and average accustomed, or the equivalent thereof, payable in cash, without discount, at the rate of exchange current on the day of the ship's arrival for banker's sight bills on London. Any average that may arise on the voyage to be adjusted according to York and Antwerp 83
rules, weight, measurement, gauge, contents, quantity, quality condition, brand and value unknown, and not accountable for loss or damage resulting from stowage, sweating, leakage, breakage, pilferage, wastage, rust, decay, rain, spray frost, thaw, effect of climate or heat of hold, bursting of bags, damage by rats, deterioration in quality, defects, slightness or insufficiency of packages, contact with or smell or evaporation from any other goods, nor for incorrect delivery of goods, arising from inaccuracies, obliteration, insufficiency or 84
absence of marks or numbers, or from any such being incorrectly stated in this bill of lading, or injury to wrappers however caused.

If said goods be of a perishable nature, such as green fruit, the consignee, his agents or assigns, shall claim the same and pay the freight thereon within forty-eight hours after the same is ready for delivery, and in default thereof the charterers or their assigns may, at their option, sell such goods at public auction for

85 account and risk of whom it may concern, and apply th proceeds of such sale as follows: to pay the expenses of such sale and all freight, custom dues, and other charges properly chargeable to said goods, and to hold the overplus, if any, for account of whom it may concern, and if said proceeds shall not be sufficient to pay said freight, expenses, duty and other charges, such sale shall not prejudice the rights of the charterers to enforce collection of the remainder. Goods will be held free of charge for primage for five days from entry
86 of steamer at custom house. A charge for primage of one third (1/3) of one cent per box per day will be collected for each box for every day held thereafter until and including the day of delivery. Not accountable for loss or damage caused by heating machinery, if any, or connection thereof on dock where goods shall be discharged.

All fines, expenses, losses or damage which the shipowner or his agents, or servants, or the ship or cargo may incur or suffer on account of incorrect or insuffi-
87 cient marking of the packages, or description of their contents, or the dangerous nature of such contents, shall be paid by the shipper or consignee, as may be required, and the shipowner shall have a lien upon the goods for the payment thereof.

Simultaneously with the ship being ready to unload the above mentioned goods, or any part thereof, the consignee of the said goods is hereby bound to be ready to receive the same from the ship's side, either on the wharf or quay at which the ship may lie for discharge,
88 or into lighters provided with a sufficient number of men to receive and stow the said goods therein, and in default thereof the master or Agent of the ship, and the Collector of above port, are hereby authorized to enter the said goods at the Custom House, and land, warehouse or place them in lighters without notice to, and at the risk and expense of the said consignee of the goods after they leave the deck of the ship. The Collector of the Port of Discharge being hereby authorized to grant a general

order for discharge immediately after entry of the ship. 89

The captain or owner has a lien on the goods for unpaid freights, through freight, average claims, or liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods. Freight on perishable goods to be paid by the shipper or consignee, in whatever condition they may be delivered; freight, if payable by shippers, is due in full in exchange for bill of lading, and to be considered as earned, ship lost or not lost, and if payable by 90 consignee on arrival of goods at place of destination, in exchange for delivery order, settlement in either case to be made without discount or abatement. Freight on goods to order, liquids and brittle or perishable goods payable by shippers if required.

The Shipowner is not liable for any damage to any goods which are capable of being covered by insurance nor for any claim, notice of which is not given before the removal of the goods, nor for claim for damage or detention to goods under through bills of lading where 91 the damage is done or detention occurs whilst the goods are not in the possession of the shipowner, nor in any case for more than the invoice or declared value of the goods, whichever shall be the least. Not accountable to any extent for gold or silver, manufactured or unmanufactured, or in shape of coin, plated articles, glass, china, jewelry, precious stones, trinkets, nor for any highly valued goods, unless the value be herein expressed and extra freight, as may be agreed on, be paid. 92

The only condition on which glass will be carried is that the shipowner will not be held liable for any breakage which may occur, however caused.

Shippers will be held accountable for all damage caused by goods of an inflammable, explosive or otherwise dangerous character, shipped without permission or without full disclosure of their nature, whether such shippers shall be aware thereof or not, and whether such shippers shall be principals or agents only, and such goods may be seized and confiscated or destroyed

by the shipowner at any time before delivery, without any compensation to the shipper or consignee.

This bill of lading, duly endorsed, to be given in exchange for delivery order.

In case of blockade or interdict of the port of discharge, or if, without such blockade or interdict, the Master shall consider it unsafe for any reason to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe, at shipper's risk and expense, and on the goods being placed in charge of any mercantile agent, or of British Consul, and a letter being put into the Post Office, addressed to the Shipper and Consignee, if named, stating the landing and with whom deposited, the goods to be at the Shipper's risk and expense, and the Masters and Owners discharged from all responsibility.

In the event of Quarantine, the goods te be discharged on arrival into Quarantine Depot, Hulk, Lighter, or other vessel, necessary for the ship's despatch, at the Consignee's risk and expense; or should this be impracticable, or the vessel not admitted, or should communication subject the Steamer to Quarantine, at a subsequent port of call, the Master to have the option, and is hereby authorized, to land the cargo at the nearest safe port to which the vessel is bound, at the risk and expense of the Consignees; and on the Goods being placed in charge of any Mercantile Agent, or of the British Consulate, a letter being put into the Post Office, addressed to the Shipper and Consignee, if named, stating the landing and with whom deposited, the Goods to be at the Shipper's risk and expense, and the Master and Owners discharged from all responsibility.

Notice —In accepting this Bill of Lading, the Shipper or other Agent of the Property carried, expressly accepts and agrees to all, its stipulations, exceptions, and conditions, whether written or printed.

In Witness whereof the Master or Agent of the said Ship hath affirmed to three Bill of Landing, all of this

tenor and date, the one of which Bill being accom- 97
plished, the others to stand void.

Not accountable for wrong marks or numbers.

Dated in Girgenti this 21st April, 1898.

Weight and quality unknown.

ANTONIO G. SCOPINICH,
Master.

With liberty either before or after proceeding to-
wards the port of discharge, to proceed to and stay at
any ports or places whatsoever (although in a contrary 98
direction to, or out of, or beyond, the route to the said
port of discharge) once or oftener, in any other back-
wards or forwards for loading or discharging cargo or
passengers, or for any other purpose whatsoever, and
all such ports and places, and sailings shall be deemed
included within the intended voyage. This liberty is
not to be considered as restricted by any words in this
contract, whether written or printed.

Said to be marked as per margin, it is specially
stipulated that no claim is to be made by the Shipper 99
or receiver for any loss arising from difference in marks
or contents.

If during the winter season the within mentioned
goods are discharged at a dock fitted with heating
machinery, a charge of 1/3 of one cent (United States
currency) per box per day will be levied on all boxes
(accidents to machinery, etc., always excepted).

[Endorsed on margin.]—1493, I. & V. Florio, Pal-
ermo.—(Flag.)—Transoceanic Line.—William J.
Peirce, Agent. — Girgenti-Porto Empedocle.— 100
Stowed in between deck amidship.—A. G. S.

[Endorsed :]—Hambro.— ——Illegible.—Freight L's.

[Endorsed :]—Libel filed June 6, 1898.

101 To the Honorable ADDISON BROWN, United States District Judge, for the Southern District of New York:

The answer of Antonio G. Scopinich, claimant of the Steamship *Styria*, to the libel of Schuyler L. Parsons against the said steamship, in a cause of contract, civil and maritime, alleges as follows:

FIRST.--He admits that on or before the 21st day of April, 1898, Ferdinand Baller & Co., of Messina,
102 Sicily, shipped on board said steamship then lying in the port of Girgenti, in the Kingdom of Italy, and bound for the port of New York, a consignment of brimstone, otherwise known as sulphur, said to weigh 3,250 cantars, to be delivered at the port of New York, or as near thereto as the steamer could safely get with the said cargo, to the order of Hambro, on payment of the freight, and upon the terms and conditions in the bills of lading, of which a copy, showing the form, is annexed to the libel.

103 He denies any knowledge or information sufficient to form a belief as to the other matters alleged in the first article of the libel.

SECOND.—He admits that at the time and place aforesaid, Ferdinand Baller & Co. shipped on board said steamship, consigned to order, another lot of brimstone, otherwise called sulphur, said to weigh 1,300 cantars, and that the master delivered bills of lading therefor, undertaking to deliver the same at the port
104 of New York, or as near thereto as the steamer could safely get with the said cargo, unto order, on payment of the freight of seven shillings and sixpence per ton of 2,000 lbs., and upon the other terms and conditions contained in said bill of lading, copy of which is annexed to the libel.

He denies any knowledge or information sufficient to form a belief as to the other matters alleged in the second article of the libel.

THIRD.—Claimant has no knowledge or information

of the matters alleged in the third article of the libel, 105
and requires proof thereof.

FOURTH.—He admits that the steamship afterwards sailed and proceeded to the port of New York, arriving on or about the 3rd day of June, 1898, but did not then and there deliver the said sulphur unto the libellant.

He denies any knowledge or information sufficient to form a belief with regard to the other matters alleged in the fourth article of the libel. He further 106
says that by reason of the outbreak of war between Spain and the United States, and the declaration of the Government of Spain that sulphur was contraband of war, it became, in his judgment, unsafe to transport the said cargo past the coast of Spain and through the Straits of Gibraltar to New York, and that, accordingly, he re-landed and stored the cargo at the port of shipment, on due notice to the shippers, and that he was justified, under the circumstances, in so doing.

FIFTH.—Upon information and belief he denies the 107
matters alleged in the fifth article of the libel.

SIXTH.—He admits that the steamship is a foreign vessel, and at the time of the filing of the libel was bound on a voyage to sea, but denies the other matters alleged in the sixth article of the libel.

SEVENTH.—He admits the jurisdiction of the Court, but denies the other matters in the seventh article of the libel alleged. 108

EIGHTH.—Further answering the said libel, and for a further and separate defense thereto, claimant alleges as follows:

(1.) That the bills of lading under which the said brimstone, otherwise called "sulphur," was carried, provided it was to be delivered "at the aforesaid port of New York, or so near thereunto as she may safely get, the Act of God * * * restraints of Princes and Rulers or People * * * excepted * * * In case

of blockade and interdict of the port of discharge, or if without such blockade or interdict, the master shall consider it unsafe, for any reason, to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe, at shipper's risk and expense ; and on the goods being placed in charge of any mercantile agent or of British Consul, and a letter being put into the Post Office addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility."

(2.) The loading of the said sulphur on board the *Styria* was completed, and bills of lading therefor had been signed on or before the 24th of April, 1898, the master being ignorant up to that time that a state of war existed between the United States and Spain, but, in fact, on the 23d of April, 1898, the Queen Regent of Spain had promulgated a royal decree; a copy of which is hereunto annexed marked Exhibit "A," and made a part hereof, announcing that a state of war existed between Spain and the United States ; that Spain intended to observe the principle that a neutral flag covers the enemy's goods, except contraband of war ; that the Spanish Government proposed to organize a service of auxiliary cruisers of the Navy, for the purpose of cruising in co operation with regular ships of war, and further providing that in order to confiscate the enemy's merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary cruisers and privateers, if and when authorized, would exercise the right of visit on the nigh seas, and in the territorial waters of the enemy, and defined contraband as follows :

"ART. VI.—Under the denomination contraband of war, the following articles are included :

"Cannons, machine-guns, mortars, guns, all kinds of arms and fire-arms, bullets, bombs, grenades, fuzes, cartridges, matches, powder, *sulphur*, saltpetre, dynamite, and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry

harness, engines for ships and their accessories, shafts, 113
screws, boilers and other articles used in the construction, repair and arming of war-ships, and in general all warlike instruments, utensils, tools and other articles, and whatever may hereafter be determined to be contraband."

A formal declaration of war by the United States was also published on April 25th, 1898, but acts of war had been committed theretofore and the declaration itself announced that a state of war had existed from and including April 21st, 1898. 114

On learning of the existence of war, and that sulphur had been declared contraband by the Spanish Government, the master being informed that Spanish ships of war were cruising along the Spanish coast and in the Straits of Gibraltar, directly in the course of his intended voyage towards the port of New York, concluded it would be unsafe to carry the cargo to destination, and, therefore, determined to reland and store it at the port of Girgenti, in accordance with the above quoted provision of the bills of lading. 115

The work of unloading and storing the cargo was begun on April 27th, and was completed at noon on the 7th of May, 1898.

All of the said sulphur was stored in the warehouse of Xenoble Urso, a qualified storekeeper at that port, and placed in charge of a mercantile agent named William Peirce. Letters were put into the Post Office addressed to the shippers and consignees, stating that the goods had been landed on account of the war, and informing them of the place and circumstances of the 116
deposit, and thereupon, the claimant is informed and believes, the goods became and were at the shippers' risk and expense, and that the master and owners were discharged from all responsibility therefor by virtue of the above quoted clause in the bills of lading.

(3.) The course of the vessel on her voyage toward New York lay along the coast and by the lighthouses of Spain, and the presence of her naval vessels in her coast waters and in the Straits of Gibraltar created a

117 liability to capture which amounted, or which the master was justified in believing amounted, to a restraint of princes and rulers or people within the sense of that exception in the bills of lading.

(4.) The bills of lading further provided as follows:

"The shipowner is not to be liable for any damage to any goods which are capable of being covered by insurance."

The claimant is informed and believes that any loss
118 or damage which the libellant may have suffered in the premises was capable of being covered by insurance, and that, accordingly, under the aforesaid clause, the owners of the goods must be deemed to have assumed the risk of such loss or damage, and to have released the shipowner from all claim therefor, having recourse to insurance for their protection.

(5) The bills of lading further provided:

"The shipowner is not to be liable * * * in
119 any case for more than the invoice or declared value of the goods, whichever shall be least."

The claimant avers that, during the months of August and September, 1898, he brought forward the said sulphur in another vessel belonging to the same owners under the terms of a stipulation with the libellant, a copy of which is hereto annexed, marked Exhibit B, and made a part hereof, and delivered the same to the libellant at the port of New York, who duly accepted the same.

120 He is informed and believes that libellant has realized by the sale of the said sulphur more than its invoice price, and that, accordingly, under the above quoted provision of the bills of lading, the libellant has not suffered any damages in the premises which are recoverable in this action.

(6.) Upon information and belief, the claimant alleges that, by the Italian law, which prevailed at the port of shipment, either party to a contract of carriage can withdraw from it without being liable for damages

when, before the vessel has left the jurisdiction, war has been declared, in consequence of which the vessel or the goods to be shipped according to the contract of affreightment, can no longer be considered free, and would be liable to capture. 121

In consequence of the declaration of war, and of the royal proclamation heretofore referred to, the cargo of the *Styria* could no longer be considered free, and was liable to risk of capture. The claimant, accordingly, was justified, under Italian law, in withdrawing from the contract, and relanding and storing the cargo at the risk of and for the account of the shippers, and said vessel is not liable in damages for the acts of the master in so doing. 122

NINTH—All and singular the premises of this answer are true.

Wherefore, the claimant prays that the said libel may be dismissed with costs, or that such other decree may be made as the justice of the cause may require. 123

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

E. B. CONVERS, being duly sworn, says that he is one of the proctors for the claimant herein, and that the foregoing answer is true to the best of his knowledge, information and belief, derived from communications received from the owners of the vessel and their agents, and from the testimony of the master herein. 124

Deponent further says that the reason why this answer is not verified by the claimant is that he is absent from the United States.

E. B. CONVERS.

Sworn to before me this 1st day of December, 1898.

JAMES T. KILBRETH,
[SEAL.] Notary Public,
New York County.

125 Exhibits A and B annexed to foregoing answer, being the same as Exhibits A and B annexed to answer in suit of Morgan *v. Styria*, are omitted here by consent.

[Endorsed]:—Answer filed December 1, 1898.

To the Honorable ADDISON BROWN, Judge of the Dis-
126 trict Court of the United States, for the Southern District of New York:

The libel of ALFRED S. MALCOMSON, of the City of New York, merchant, against the Steamship *Styria* whereof Antonio G. Scopinich was and is Master, her engines, boilers, tackle, apparel and furniture, and all persons intervening for their interest therein in a cause of action, civil and maritime, alleges as follows:

FIRST.—That some time in the month of April, 1898,
127 Emil Fog & Sons shipped on board said steamer then lying in the Port of Girgenti in Sicily, in the Kingdom of Italy, and bound for the Port of New York, in good order and well conditioned, to be carried and transported in said steamer to the Port of New York, and delivered in like good order to the Canadian Bank of Commerce, fifteen hundred tons of brimstone, in bulk, for the freight of six shillings, British sterling, per ton of twenty hundred weight, delivered in full, the said Emil Fog and Sons receiving therefor from the said Master
128 bills of lading, receipts and contracts whereby and wherein the said Master charged his body and goods, and also the said vessel, her engines, boilers, tackle, apparel and furniture, for the performance of said contract, a copy of which is hereto annexed.

SECOND.—That said goods were the property of this libellant, and that before the arrival of the said vessel at said Port of New York, the said bills of lading, receipts and contracts were by said Canadian Bank of Commerce duly assigned and endorsed to libellant.

THIRD.—That said steamship sailed from the said Port of Girgenti for the Port of New York, where she arrived on or about the third day of June, 1898, and now is, but notwithstanding the libellant has been at all times ready and willing to receive the said merchandise, and on so receiving the same to pay the freight thereon, yet the said Master has not yet delivered the said merchandise to the libellant, but to deliver the same has refused and still does refuse, whereby the libellant has been damaged to the amount of Fifty thousand dollars. 129 130

FOURTH.—That said steamship is a foreign vessel, and is discharging cargo and is about to leave this Port, and the United States, and the said Master has refused and refuses to deliver the said merchandise, so that the libellant will be without remedy, unless by proceedings against said vessel, her engines, boilers, tackle, apparel and furniture.

FIFTH.—That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. 131

Wherefore, the libellant prays that process in due form of law according to the course of this Court in cases of admiralty and maritime jurisdiction, may issue against the said Master and against the said steamship, her engines, boilers, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be 132 pleased to decree the payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

SULLIVAN & CROMWELL,
Proctors for Libellants,
45 Wall Street,
New York City.

133 SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

ALFRED S. MALCOLMSON, being duly sworn, says that he is the above named libellant, and that the foregoing libel is true, of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ALFRED S. MALCOLMSON.

134 Sworn to before me this }
4th day of June, 1898. }

HENRY C. KENNEDY,
Notary Public,
Kings Co.

Cert. filed N. Y. Co.

[Endorsed:]—Libel filed June 4, 1898.

Shipped in apparent good order and condition by T. V. Florio in and upon the steamship called the
135 *Styria*, whereof A. G. Scopinich is master for this present voyage, and now lying in the Port of Girgenti and bound for New York with liberty to call at any port or ports, in any rotation in the Mediterranean, Adriatic and adjacent seas, or on the coasts of Spain or Portugal or in the Azores, or in North America for the purpose of receiving and delivering coals, cargo or passengers, or for any other purpose whatsoever; to sail with or without pilots; to tow and assist vessels in all situations, although deviating thereby from the
136 voyage and to carry goods of all kinds, dangerous or otherwise, and with liberty to tranship any part of the cargo by steamer,

Sicilian cantars 13,000 Crude Brimstone, best second quality unmixed. Said to be marked and numbered as per margin, and to be delivered from the ship's deck, where the ship's responsibility shall cease, in the like good order and condition, at the aforesaid Port of New York, or so near thereunto as she may safely get. The Act of God, the Queen's enemies, pirates, robbers by land or sea, jettison, thieves, vermin, barratry of master or mariners, restraints of princes and rulers

or people, loss or damage resulting from any of the 137
following perils, whether arising from the negligence, default or error in judgment of the pilot, master, mariners, engineers, stevedore, or other persons in the service of the ship or any other ship or ships belonging to or sailing under the flag of the company or otherwise, namely : Risk of lighterage to or from the vessel, or of craft or hulk or transhipment, explosion, heat, or fire at sea, in craft or hulk, or on shore, burst ing of boilers, unseaworthiness arising from breakage of shafts or any latent defect in hull, machinery, ap- 138
purtenances, or from the consequences of any damage or injury thereto, howsoever such damage or injury may be caused, collision, stranding, straining or other perils of the seas, rivers, navigation or land, transit of whatever nature or kind soever, and howsoever caused, excepted, with liberty (in event of steamer putting back to this or into any other port or otherwise being prevented from any cause from commencing or proceeding in the ordinary course of her voyage) to ship or tranship the goods by any other steamer, and with 139
liberty to proceed under sail or in tow of any other manner which the ship's owner may think fit unto.

Order of Canadian Bank of Commerce.

or to his or their assign, he or they paying freight, the shipper also remaining liable for the same, for the entire quantity of goods therein enumerated, whether delivered sound or sound, in cash, free of interest on the ship's delivery, at and after the rate of six shillings and sixpence British sterling p. ton of 20 cwt. deliv- 140
ered in full and average accustomed ; or the equivalent thereof, payable in cash, without discount, at the rate of exchange current on the day of the ship's arrival for banker's sight bills on London. Any average that may arise on the voyage to be adjusted according to York and Antwerp rules –freight, measurement, gauge, contents, quantity, quality, condition, brand and value unknown, and not accountable for loss or damage resulting from stowage, sweating, leakage, breakage, pilferage, wastage, rust, decay, rain, spray frost, thaw, effect of climate or heat of hold, bursting of bags, dam-

141 age by rats, deterioration in quality, defects, slightness or insufficiency of packages, contact with or smell or evaporation from any other goods, nor for incorrect delivery of goods arising from inaccuracies, obliteration, insufficiency or absence of marks, or numbers, or from any such being incorrectly stated in this bill of lading, or injury to wrappers however caused.

If said goods be of a perishable nature. such as green fruit, the consignee, his agents or assigns, shall claim the same and pay the freight thereon within forty-
142 eight hours after the same is ready for delivery, and in default thereof the charterers or their assigns may, at their option, sell such goods at public auction for account and risk of whom it may concern, and apply the proceeds of such sale as follows: to pay the expenses of such sale and all freight, custom dues, and other charges properly chargeable to said goods, and to hold the overplus, if anv, for account of whom it may concern, and if said proceeds shall not be sufficient to pay said freight, expenses,
143 duty and other charges, such sale shall not prejudice the rights of the charterers to enforce collection of the remainder. Goods will be held free of charge for primage for five days from entry of steamer at Custom House. A charge for primage of one third ($\frac{1}{3}$) of one cent per box per day will be collected for each box, for every day held thereafter until and including the day of delivery. Not accountable for loss or damage caused by heating machinery, if any, or connection thereof on dock, where goods shall be discharged.

144 All fines, expenses, losses or damage which the shipowner or his agents or servants, or the ship, or cargo may incur or suffer on account of incorrect or insufficient marking of the packages, or description of their contents, or the dangerous nature of such contents shall be paid by the shipper or consignee, as may be required, and the shipowner shall have a lien upon the goods for the payment thereof.

Simultaneously with the ship being ready to unload the above-mentioned goods or any part thereof, the consignee of the said goods is hereby bound to be ready to receive the same from the ship's side, either

on the wharf or quay at which the ship may lie for 145
discharge, or into lighters provided with a sufficient number of men to receive and stow the said goods therein, and in default thereof, the Master or agent of the ship, and the Collector of above port are hereby authorized to enter the said goods at the Custom House, and land, warehouse, or place them in lighters without notice to, and at the risk and expense of the said consignee of the goods after they leave the deck of the ship. The Collector of the port of discharge being hereby authorized to grant a general order for 146
discharge immediately after entry of the ship.

The captain or owner has a lien on the goods for unpaid freights, through freight, average claims, or liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods. Freight on perishable goods to be paid by the shipper or consignee, in whatever condition they may be delivered, freight, if payable by shippers, is due in full in exchange for bill of lading and to be considered as earned, ship lost or not lost, and if payable by con- 147
signee on arrival of goods at place of destination, in exchange for delivery order, settlement in either case to be made without discount or abatement. Freight on goods to order, liquids and brittle or perishable goods payable by shippers if required.

The shipowner is not to be liable for any damage to any goods which are capable of being covered by insurance nor for any claim, notice of which is not given before the removal of the goods, nor for claim for damage or detention to goods under through 148
bills of lading where the damage is done or detention occurs whilst the goods are not in the possession of the shipowner, nor in any case for more than the invoice or declared value of the goods, whichever shall be the least. Not accountable to any extent for gold or silver, manufactured or unmanufactured ; or in shape of coin, plated articles, glass, china, jewelry, precious stones, trinkets nor for any other highly valued goods, unless the value be herein expressed and extra freight, as may be agreed on be paid.

The only condition on which glass will be carried is

that the shipowner will not be held liable for any breakage which may occur, however caused.

Shippers will be held accountable for all damage caused by goods of an inflammable, explosive or otherwise dangerous character, shipped without permission or without full disclosure of their nature whether such shippers shall be aware thereof or not and whether such shippers shall be principals or agents only, and such goods may be seized and confiscated or destroyed by the shipowner at any time before delivery, without any compensation to the shipper or consignee.

This bill of lading, duly endorsed to be given in exchange for delivery order.

In case of blockade or interdict of the Port of Discharge, or if, without such blockade or interdict, the Master shall consider it unsafe for any reason to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe, at shipper's risk and expense, and on the goods being placed in charge of any Mercantile Agent, or of British Consul, and a letter being put into the Post Office, addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility.

In the event of Quarantine, the goods to be discharged on arrival into Quarantine depot, hulk, lighter, or other vessel, necessary for the ship's despatch, at the consignee's risk and expense; or should this be impracticable, or the vessel not admitted, or should communication subject the steamer to Quarantine at a subsequent port of call, the master to have the option, and is hereby authorized to land the cargo at the nearest safe port to which the vessel is bound, at the risk and expense of the consignees, and on the goods being placed in charge of any Mercantile Agent, or of the British Consulate, a letter being put into the Post Office, addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility.

NOTICE.—In accepting this bill of lading the shipper 153
or other agent of the property carried expressly accepts and agrees to all its stipulations, exceptions and conditions, whether written or printed.

In witness whereof the master or agent of the said ship hath affirmed to three bill of lading, all of this tenor and date, the one of which bill being accomplished, the others to stand void.

Not accountable for wrong marks or numbers.

Dated in Girgenti this 24th April, 1898.

Weight and quantity unknown. 154

ANTONIO G. SCOPINICH,
Master.

With liberty either before or after proceeding towards the port of discharge to proceed to and stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any other backwards or forwards for loading or discharging cargo or passengers, or for any other purpose whatsoever, and all such ports and places, and sailings 155
shall be deemed included within the intended voyage. This liberty is not to be considered as restricted by any words in this contract, whether written or printed.

Said to be marked as per margin, it is specially stipulated that no claim is to be made by the shipper or receiver for any loss arising from difference in marks or contents.

If during the Winter season the within mentioned goods are discharged at a dock fitted with heating machinery, a charge of 1/3 of one cent (United States 156
currency) per box per day will be levied on all boxes (accidents to machinery, etc., always excepted).

[Endorsed on Margin :]—I. & V. Florio, Palermo.—(Flag).—Transoceanic Line, William J. Peirce, Agent, Girgenti, Porto Empedocle.—En. Crs., 13,000.—Hold No. 2 (two).—A. G. S.—The second bill of lading annexed to the foregoing libel being in the same form as the foregoing is annulled by consent.—Freight L's.

[Endorsed :]—Libel filed June 4. 1898.

157 To the Honorable ADDISON BROWN, United States District Judge, for the Southern District of New York:

The answer of Antonio G. Scopinich, claimant of the Steamship *Styria*, to the libel of Alfred S. Malcolmson, against the said steamship, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—He admits that in the month of April, 1898, Emil Fog & Sons shipped on board said steamship,
158 then lying in the port of Girgenti, Italy, and bound on a voyage to New York, a consignment of brimstone, otherwise known as "sulphur," said to weigh 1500 tons, to be delivered at the port of New York, or as near thereunto as the steamer could safely get with the said cargo, to the order of the Canadian Bank of Commerce, on payment of the freight, and upon the other terms and conditions stated in the bills of lading delivered by the Master, a copy of which is annexed to the libel.

159 He denies any knowledge or information as to the other matters alleged in the first article of the libel, and requires proof thereof.

SECOND.—He has no knowledge or information as to the matters alleged in the second article of the libel, and requires proof thereof.

THIRD.—He admits that the steamship afterwards sailed and proceeded to the port of New York, arriv-
160 ing on or about the third day of June, 1898, but did not then and there deliver the said sulphur unto the libellant.

He denies any knowledge or information sufficient to form a belief, with regard to the other matters alleged in the third article of the libel. He further says that by reason of the outbreak of war between Spain and the United States, and the declaration of the Government of Spain that sulphur was contraband of war, it became, in his judgment, unsafe to transport the said cargo past the coast of Spain and

through the Straits of Gibraltar to New York, and 161
that, accordingly, he re-landed and stored the cargo at the port of shipment, on due notice to the shippers, and that he was justified, under the circumstances, in so doing.

FOURTH.—He admits that the steamship is a foreign vessel, and that at the time of the filing of the libel, was about to leave port, and, except as otherwise admitted herein, he denies the remaining matters alleged in the fourth article of the libel. 162

FIFTH.—He admits the jurisdiction of the Court, but denies the other matters alleged in the fifth atticle of the libel.

SIXTH.—Further answering the said libel, and for a further and separate defense thereto, claimant alleges as follows:

(1.) That the bills of lading under which the said brimstone, otherwise called "sulphur," was carried, provided that it was to be delivered "at the aforesaid 163
port of New York, or so near thereunto as she may safely get, the Act of Cod * * * restraints of Princes and Rulers of People * * * excepted * * *. In case of blockade or interdict of the port of discharge, or if without such blockade or interdict, the Master shall consider it unsafe, for any reason, to enter or discharge cargo there, he is to have option of landing the goods at any port which he may consider safe, at shipper's risk and expense; and on the goods 164
being placed in charge of any mercantile agent or of British Consul, and a letter being put into the post office addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the Master and owners discharged from all responsibility."

(2.) The loading of the said sulphur on board the *Styria* was completed, and bills of lading therefor had been signed, or or before the 24th of April 1898, the Master being ignorant up to that time that a state of

165 war existed between the United States and Spain, but, in fact, on the 23rd of April, 1898, the Queen Regent of Spain had promulgated a royal degree, a copy of which *is hereto annexed and marked Exhibit "A"* and made a part hereof, announcing that a state of war existed between Spain and the United States; that Spain intended to observe the principle that a neutral flag covers the enemy's goods, except contraband of war; that the Spanish Government proposed to organize a service of auxiliary cruisers of the navy, for the
166 purpose of cruising in co operation with regular ships of war, and further providing that in order to confiscate the enemy's merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary cruisers and privateers, if and when authorized, would exercise the right of visit on the high seas and in the territorial waters of the enemy, and defined contraband as follows:

"Art. VI. Under the denomination contraband of war, the following articles are included:

167 "Cannons, machine-guns, mortars, guns, all kinds of arms and fire-arms, bullets, bombs, grenades, fuses, cartridges, matches, powder, *sulphur*, saltpetre, dynamite, and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construction, repair and arming of warships, and in general all warlike instruments, utensils, tools, and other articles, and whatever may hereafter be determined to be contraband."

168 A formal declaration of war by the United States was also published on April 25th, 1898, but acts of war had been committed heretofore, and the declaration itself announced that a state of war had existed from and including April 21st, 1898.

On hearing of the existence of war, and that sulphur had been declared contraband by the Spanish Government, the Master being informed that Spanish ships of war were cruising along the Spanish coast and in the Straits of Gibraltar, directly in the course of his intended voyage toward the port of New York, con-

cluded it would be unsafe to carry the cargo to desti- 169
nation, and, therefore, determined to re-land and store it at the port of Girgenti, in accordance with the above quoted provision of the bills of lading.

The work of unloading and storing the cargo was begun on April 27th, and was completed at noon on the 7th of May, 1898.

All of the said sulphur was stored in the warehouse of Xenobio Urso, a qualified storekeeper at that port, and placed in charge of a mercantile agent named William Peirce. Letters were put in the post office 170
addressed to the shippers and consignees, stating that the goods had been landed on account of the war, and informing them of the place and circumstances of the deposit, and thereupon, as the claimant is informed and believes, the goods, became and were at the shippers' risk and expense, and that the Master and owners were discharged from all responsibility therefor, by virtue of the above quoted clause in the bills of lading.

(3.) The course of the vessel on her voyage towards 171
New York lay along the coast and by the lighthouses of Spain, and the presence of her naval vessels in her coast water and in the Straits of Gibraltar, created a liability to capture, which amounted, or which the Master was justified in believing amounted to a restraint of princes and rulers or people, within the sense of that exception in the bills of lading.

(4.) The bills of lading further provided as follows:

"The shipowner is not to be liable for any damage 172
to any goods which are capable of being covered by insurance."

The claimant is informed and believes that any loss or damage which the libellant may have suffered in the premises, was capable of being covered by insurance, and that, accordingly, under the aforesaid clause, the owners of the goods must be deemed to have assumed the risk of such loss or damage, and to have released the shipowner from all claim therefor, having recourse to insurance for their protection.

173 (5.) The bills of lading further provided:

"The shipowner is not to be liable * * * in any case for more than the invoice or declared value of the goods, whichever shall be least."

The claimant avers that during the months of August and September, 1898, he brought forward the said sulphur in another vessel belonging to the same owners, under the terms of a stipulation with the libellant, a copy of which is hereto annexed marked Exhibit "B"
174 and made a part thereof, and delivered the same to the libellant at the port of New York, who duly accepted the same.

He is informed and believes that libellant has realized by the sale of said sulphur, more than its invoice price, and that, accordingly, under the above quoted provision of the bills of lading, and the libellant has not suffered any damages in the premises which are recovable in this action.

(6.) Upon information and belief the claimant alleges
175 that by the Italian law which prevailed at the port of shipment, either party to a contract of carriage can withdraw from it without being liable for damages when, before the vessel has left the jurisdiction, war has been declared in consequence of which the vessel or the goods to be shipped according to the contract of affreightment can no longer be considered free, and would be liable to risk or capture.

In consequence of the declaration of war, and of the royal proclamation hereinbefore referred to, the cargo
176 of the *Styria* would no longer be considered free, and was liable to risk of capture. The claimant, accordingly, was justified, under Italian law, in withdrawing from the contract, and re-landing and storing the cargo at the risk of and for the account of the shippers, and said vessel is not liable in damages for the acts of the Master in so doing.

SEVENTH.—All and singular, the premises of this answer are true.

Wherefore, the claimant prays that the said libel

may be dismissed with costs, or that such other de- 177
cree may be made as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

E. B. CONVERS, being duly sworn, says that he is one of the proctors for the claimant herein, and that the foregoing answer is true to the best of his knowl- 178
edge, information and belief, derived from communications received from the owners of the vessel and their agents, and from the testimony of the master herein.

Deponent further says that the reason why this answer is not verified by the claimant is that he is absent from the United States.

E. B. CONVERS.

Sworn to before me this }
1st day of December, 1898. }

JAMES T. KILBRETH, 179
[SEAL] Notary Public,
New York County.

[Endorsed:]—Answer filed December 1, 1898.

Exhibits A and B annexed to foregoing answer being the same as exhibits A and B annexed to answer in suit of Morgan *v. Styria*, are omitted here by consent.

180

181 To Honorable Addison Brown, Judge of the District Court of the United States for the Southern District of New York:

The libellants, John Munroe, Henry W. Munroe, Edgar Lockwood and Frederick Reiset, bankers, lawfully doing business in the City of New York, according to the statute in such case made and provided, under the firm name of John Munroe & Company, against steamship *Styria*, whereof A. G. Scopinich
182 was and is master, her tackle, apparel, furniture, engines, pumps, &c., and all persons intervening for their interests therein in a cause or contract civil or maratime, allege as follows:

First.—That on or about the 24th day of April, 1898, F. Amato & Company, of Palermo, in the Kingdom of Italy, shipped on board of said steamship, then lying in the port of Girgenti, in the Kingdom of Italy, and bound for the port of New York, in good order, well conditioned to be carried and transported in said
183 steamship to the port of New York and delivered to the order of John Munroe & Company, one hundred tons of brimstone seconds, best quality, unmixed, in bulk, in like good order, for the freight of six shillings and three pence per ton of two thousand two hundred and forty pounds (2,240 lbs.), as delivered, and average accustomed to be paid by the libellants to the said F. Amato & Company, receiving thereon from the said master three bills of lading, receipts and contracts, all of even tenor and date, one of which being accom-
184 plished, the other two stand void, whereby and wherein he charged his body and goods, and also the said vessel, her tackle, apparel and furniture, for the performauce of said contract, a copy of which is hereto annexed.

Second.—That the said steamship sailed for the said port of New York, where she arrived on the 3d day of June, 1898, and now is; but notwithstanding that the libellants have been at all times ready and willing, and

still are ready and willing, to receive the said mer- 185
chandise in good order, and on so receiving the same to pay the freight thereon, yet the said master has not delivered the said merchandise to the libellants.

THIRD.—That the libellants have demanded of the master of said vessel the delivery of the said goods, tendering him the said bill of lading, duly endorsed, and also all the lawful charges thereon for the freight and otherwise, but the said master has neglected and refused to deliver the said goods, *and has converted* 186
the same to his own use, whereby the said libellants have sustained damage to the amount of the value of the said goods, to wit, the sum of three thousand four hundred dollars ($3,400), with interest thereon from the 24th day of April, 1898.

FOURTH.—That the said steamship is a foreign vessel, and is now soon to leave this port in the United States, and the said master has refused and refuses to pay the said damage, or to deliver such mer- 187
chandise, so that the libellants will be without remedy unless, by proceedings against such vessel, her tackle, apparel, furniture, engines, boilers, &c.

FIFTH. That all and singularly the premises are true and are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellants pray that process in due form of law, according to the course of this Court in case of admiralty and maritime jurisdiction, may be issued 188
against the said master and against the said steamship, her tackle, apparel, furniture, engines, boilers, &c., and that all persons claiming an interest therein may be cited to appear and answer all and singularly the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages afore said, with costs, and that the said vessel may be condemned and sold to pay the same, and that the said libellants may have such other and further relief in the

189 premises as in law and justice they may be entitled to receive.

STERN & RUSHMORE,
Proctors for Libellants,
Office and P. O. address,
No. 40 Wall Street,
New York City.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.
City of New York.

190 EDGAR LOCKWOOD, being duly sworn, says: That he is a member of the firm of John Munroe & Company, the libellants named in the foregoing libel; that he has read the same and knows the contents thereof, and that the same is true according to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

191 EDGAR LOCKWOOD.

Sworn to before me this
7th day of June, 1898.
S. INGERSOLL KETTOR,
Notary Public,
Kings County.
Certificate filed in N. Y. Co.

Shipped in apparent good order and conditioned by F. AMATO & Co., in and upon the steamship called the
192 *Styria*, whereof A. G. Scopinich is master for this present voyage, and now lying in the port of Girgenti and bound for New York, with liberty to call at any port or ports in any rotation in the Mediterranean, Adriatic and adjacent seas, or on the coast of Spain or Portugal, or in the Azores, or in North America, for the purpose of receiving and delivering coals, cargo or passengers, or for any other purpose whatsoever, to sail with or without pilots, to tow and assist vessels in all situations, although deviating thereby from the voyage, and to carry goods of all kinds, dangerous or

otherwise, and with liberty to tranship any part of the 193
cargo by steamer (100) one hundred tons of pounds
2240 brimstone seconds best quality unmixed in bulk.

Said to be marked and numbered as per margin and
to be delivered from the ship's deck where the ship's
responsibility shall cease in the like good order and
condition at the aforesaid port of New York, or so
near thereunto as she may safely get, the Act of God,
the Queen's Enemies, Pirates, Robbers by land or sea,
jettison, thieves, vermin, barratry of master or mar-
iners, restraints of princes and rulers of people, loss or 194
damage resulting from any of the following perils:
whether arising from the negligence, default orerr or in
judgment of the pilot, master, mariners, engineers, steve-
dore or other persons in the service of the ship or any
other ship or ships, belonging to or sailing under the flag
of the company or otherwise, namely: risk of lighterage
to or from the vessel or of craft or hulk or trans-ship-
ment, explosion, heat or fire at sea in craft or hulk
or on shore, bursting of boilers, unseaworthiness
arising from the breakage of shafts, latent defect 195
in hull, machinery or appurtenances, or from the con-
sequences of any damage or injury thereto, howsoever
such damage or injury may be caused, collisions,
strandings, straining, or other perils of the seas, rivers.
navigation or land transit of whatever nature or kind
soever and howsoever caused except with liberty (in
event of steamer putting back to this or to any other
port or otherwise being prevented from any cause from
commencing or proceeding in the ordinary course of
her voyage) to ship or transship the goods by any 196
other steamer, and with liberty to proceed under sail
or in tow or any other manner which the ship's owner
may think fit, unto Messrs. John Munroe & Co. or to his
or their assigns, he or they paying freight, the shipper
also remaining liable for the same for the entire quan-
tity of goods therein enumerated, whether delivered
sound or unsound, in cash, free of interest, on the
ship's delivery at and after the rate of six shillings and
threepence British sterling per ton in full, with
per cent. primage and average accustomed, or the

equivalent thereof, payable in cash, without discount, at the rate of exchange current on the day of the ship's arrival for banker's sight bills on London.

Any average that may arise on the voyage to be adjusted according to York and Antwerp rules— *Weight*, measurement, gauge, contents, quantity, quality, condition, brand and value unknown and not accountable for loss or damage resulting from stowage, sweating, leakage, breakage, pilferage, *wastage*, rust, decay, rain, spray, frost, thaw, effect of climate or heat of hold, bursting of bags, damage of rats, deterioration of quality, defects, slightness or insufficiency of packages, contact with, or smell, or evaporation from any other goods, nor for incorrect delivery of goods arising from inaccuracies, obliteration, insufficiency of marks or numbers or from any such being incorrectly stated in this bill of lading, or injury to wrappers, however caused.

If the said goods be of a perishable nature, such as green fruit, the consignee, his agents or assigns, shall claim the same and pay the freight thereon within forty-eight hours after the same is ready for delivery, and in default thereof the charterers or their assigns may, at their option, sell such goods at public auction for account and risk of whom it may concern, and apply the proceeds of such sale as follows: to pay the expenses of such sale and all freight, custom dues and other charges properly chargeable to said goods, and to hold the overplus, if any, for account of whom it may concern, and if the said proceeds shall not be sufficient to pay said freight, expenses, duty and other charges, such sales shall not prejudice the right of the charterers to enforce the collection of the remainder.

Goods will be held free of charge for primage for five days from entry of steamer at Custom House.

A charge for primage of one-third of one per cent. per box per day will be collected for each box for every day held thereafter until and including the day of delivery, not accountable for loss or damage caused by

heating machinery, if any, or connection thereof on 201
dock, where goods will be discharged.

All fines, expenses, losses or damages which the shipowner or his agents or servants or the ship or cargo may incur or suffer on account of incorrect or insufficient marking of the packages or description of their contents, or the dangerous nature of such contents, shall be paid by the shipper or consignee as may be required, and the shipowner shall have a lien on the goods for the pay ment thereof.

Simultaneously with the ship being ready to unload 202
the above mentioned goods, or any part thereof, the consignee of the said goods is hereby bound to be ready to receive the same from the ship's side, either on the wharf or quay at which the ship may lie for discharge, or into lighters provided with a sufficient number of men to receive and stow the goods therein, and in default thereof the master or agent of the ship and the Collector of the above Port are hereby authorized to enter the said goods at the Custom House, and land, warehouse or place them in lighters, without 203
notice to, and at the risk and expense of, the said consignee of the goods after they leave the deck of the ship.

The Collector of the Port of discharge being hereby authorized to grant a general order for the discharge immediately after entry of the ship.

The captain or owner has a lien on the goods for unpaid freight, through freight, average claims or liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods. 204
Freight on perishable goods to be paid by the shipper or consignee in whatever condition they may be delivered. Freight if payable by shippers is due in full in exchange for bill of lading and to be considered as earned, ship lost or not lost, and if payable by con signee on arrival of goods on place destination, in ex change for delivery order. Settlement in either case to be made without discount or abatement. Freight on goods to order, liquids and brittle or perishable goods payable by shippers if required.

205 The shipowner is not to be liable for any damage to any goods which are capable of being covered by insurance nor for any claim notice of which is not given before the removal of the goods, nor for claim for damage or detention of goods under through bill of lading, where the damage is done or detention occurs whilst the goods are not in the possession of the shipowner, nor in any case for more than the invoice or declared value of the goods which ever shall be the least. Not accountable to any extent for gold
206 or silver manufactured, or unmanufactured, or in the shape of coin, plated articles, glass, china, jewelry, precious stones, trinkets nor for any other highly valued goods unless the value be herein expressed and extra freight as may be agreed upon may be paid. The only condition on which glass will be carried is that the shipowner will not be held liable for any breakage which may occur, however caused.

Shippers will be held accountable for all damage
207 caused by goods of an inflammable, explosive or otherwise dangerous character, shipped without permission or without full disclosure of their nature, whether such shippers shall be aware thereof or not, and whether such shippers shall be principal or agents only, and such goods may be seized and confiscated or destroyed by the shipowner at any time before delivery, without any compensation to the shipper or consignee.

This bill of lading duly endorsed to be given in exchange for delivery order.

208 In case of blockade or interdict of the port of discharge, or if, without such blockade or interdict, the master shall consider it unsafe, for any reason, to enter or discharge cargo there he is to have option at landing the goods at any other port which he may consider safe, at shipper's risk and expense, and on the goods being placed in charge of any mercantile agent, or of British Consul, and a letter being put into the post office addressed to the shipper or consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and

the master and owners discharged from all responsi- 209
bility.

In the event of quarantine the goods to be discharged on arrival into quarantine depot, hulk, lighter or other vessel neccessary for the ship's despatch, at the consignee's risk and expense, or should this be impracticable, or the vessel not admitted, or should commmunication subject the steamer to quarantine at a subsequent port of call, the master to have the option and is hereby authorized to land the cargo at the nearest safe port to which the vessel is bound, at the risk and expense 210
of the consignees, and on the goods being placed in charge of any mercantile agent, or of the British Consulate, a letter being put into the post-office addressed to the shipper or consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility.

Notice, in accepting this bill of lading the shipper or other agent of the property carried expressly accept and agrees to all its stipulations exceptions and condi- 211
tions, whether written or printed

In witness whereof the master or agent of the said ship hath affirmed to three bills of lading, all of this tenor and date, and one of which bill being accomplished, the others to stand void.

Not accountable for wrong marks or numbers.

Dated in Girgenti, this 24th day April, 1898.

Weight and quality unknown.

ANTONIO G. SCOPINICH,
Master. 212

With liberty either before or after proceeding towards the port of discharge, to proceed to and stay at any ports or places whatsoever (although in a contrary direction to or out of or beyond the route to the said port of discharge) once or oftener, in any order backwards or forwards, for loading or discharging cargo, or passengers, or for any other purpose whatsoever, and all such ports and places and sailings shall be deemed included within the intended voyage. This liberty is

not to be considered as restricted by any words in this contract whether written or printed.

Said to be marked as per margin it is specially stipulated that no claim is to be made by the shipper or receiver for any loss arising from difference in marks or contents.

If during the winter season the within mentioned goods are discharged at a dock fitted with heating machinery, a charge of one-third of one cent (United States Currency) per box per day will be levied on all boxes (accidents to machinery, etc., always excepted).

I. & V. Florio, Palermo.

(A flag)

Transoceanic Line.

In bulk 100 tons brimstone 2ds Bost.

N 1 hold and N 5 between deck.

A. G. S.

[Endorsed:]—per pro John Munroe & Co., Edward T. Latham.

[Endorsed:]—Libel filed June 7, 1898.

To the Honorable ADDISON BROWN, United States District Judge, for the Southern District of New York: 217

The answer of Antonio G. Scopinich, claimant of the Steamship *Styria*, to the libel of John Munroe, Henry W. Munroe, Edgar Lockwood and Frederick Reiset, against the said steamship, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—He admits that on or before the 24th of April, 1898, F. Amato & Co, shipped on board said 218
steamship then lying in the port of Girgenti, in the Kingdom of Italy, and bound to the port of New York, a consignment of sulphur said to weigh 100 tons, and to be seconds best quality, unmixed, in bulk, to be delivered at the port of New York, or as near thereto as the steamer could safely get with the said cargo, to the order of John Munroe & Co., on payment of the freight, and upon the other conditions stated in the bills of lading, a copy of which is annexed to the libel.

219

SECOND.—He admits that the steamship afterwards sailed and proceeded to the port of New York, arriving on or about the 3rd day of June, 1898, but did not then and there deliver the said sulphur unto the libellants.

He denies any knowledge or information sufficient to form a belief, with regard to the other matter alleged in the second article of the libel. He further says that by reason of the outbreak of war between Spain and the United States, and the declaration of the Government of Spain that sulphur was contraband of war, it 220
became, in his judgment, unsafe to transport the said cargo past the coast of Spain and through the Straits of Gibraltar to New York, and that, accordingly, he re landed and stored the cargo at the port of shipment, on due notice to the shippers, and that he was justified, under the circumstances, in so doing.

THIRD.—Upon information and belief, he denies the matters alleged in the third article of the libel.

FOURTH.—He admits the matters alleged in the

221 fourth article of the libel, except as hereinbefore and hereinafter alleged.

FIFTH.—He admits the jurisdiction of the Court, but denies the other matters in the fifth article of the libel alleged.

SIXTH.—Further answering the said libel, and for a further and separate defense thereto, claimant alleges as follows:

222 (1.) That the bills of lading under which the said brimstone, otherwise called "sulphur," was carried, provided that it was to be delivered "at the aforesaid port of New York, or so near thereunto as she may safely get, the Act of God * * * restraints of Princes and Rulers or People * * * excepted * * * In case of blockade or interdict of the port of discharge, or if without such blockade or interdict, the master shall consider it unsafe, for any reason, to enter or discharge cargo there, he is to have option of
223 "landing the goods at any other port which he may consider safe, at shipper's risk and expense, and on the goods being placed in charge of any mercantile agent or of British Consul, and a letter being put into the postoffice addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility."

(2.) The loading of the said sulphur on board the
224 *Styria* was completed and bills of lading therefor had been signed, on or before the 20th day of April, 1898, the master being ignorant up to that time that a state of war existed between the United States and Spain, but, in fact, on the 23rd of April, 1898, the Queen Regent of Spain had promulgated a royal decree, a copy of which is hereto annexed marked Exhibit "A" and made a part hereof, announcing that a state of war existed between Spain and the United States; that Spain intended to observe the principle that a neutral flag covers the enemy's goods, except contraband of

war; that the Spanish government proposed to organize a service of auxiliary cruisers of the navy for the purpose of cruising in co-operation with regular ships of war, and further providing that in order to confiscate the enemy's merchandise under their own flag and contraband of war under any flag the royal navy, auxiliary cruisers and privateers, if and when authorized, would exercise the right of visit on the high seas and in the territorial waters of the enemy, and defined contraband as follows: 225

"Art. VI. Under the denomination contraband of war the following articles are included: 226

"Cannons, machine guns, mortars, guns, all kinds of arms and firearms, bullets, bombs, grenades, fuses, cartridges, matches, powder, *sulphur*, saltpetre, dynamite, and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construction, repair and arming of war ships, and in general all warlike instruments, utensils, tools and other articles and whatever may hereafter be determined to be contraband." 227

A formal declaration of war by the United States was also published on April 25th, 1898, but acts of war had been committed theretofore, and the declaration itself announced that a state of war had existed from and including April 21st, 1898.

On learning of the existence of war and that sulphur had been declared contraband by the Spanish government, the master being informed that Spanish ships of war were cruising along the Spanish coast and in the Straits of Gibraltar, directly in the course of his intended voyage towards the port of New York, concluded it would be unsafe to carry the cargo to destination, and, therefore, determined to re-land and store it at the port of Girgenti, in accordance with the above quoted provision of the bills of lading. 228

The work of unloading and storing the cargo was begun on April 27th and was completed at noon on the 7th of May, 1898.

All of the said sulphur was stored in the warehouse

of Xenobio Urso, a qualified storekeeper at that port, and placed in charge of a mercantile agent named William Peirce. Letters were put into the postoffice addressed to the shippers and consignees, stating that the goods had been landed on account of the war, and informing them of the place and circumstances of the deposit, and thereupon, as the claimant is informed and believes, the goods became and were at the shippers' risk and expense, and that the master and owners were discharged from all responsibility therefor by virtue of the above quoted clause in the bills of lading.

(3.) The course of the vessel on her voyage towards New York lay along the coast and by the lighthouses of Spain, and the presence of her naval vessels in her coast waters and in the Straits of Gibraltar created a liability to capture, which amounted, or which the master was justified in believing, amounted to a restraint of princes and rulers or people, within the sense of that exception in the bills of lading.

(4.) The bills of lading further provided as follows:

"The shipowner is not to be liable for any damage to any goods which are capable of being covered by insurance."

The claimant is informed and believes that any loss or damage which the libellants may have suffered in the premises was capable of being covered by insurance, and that, accordingly, under the aforesaid clause, the owners of the goods must be deemed to have assumed the risk of such loss or damage, and to have released the shipowner from all claim therefor, having recourse to insurance for their protection.

(5.) The bills of lading further provided:

"The shipowner is not to be liable * * * in any case for more than the invoice or declared value of the goods, whichever shall be least."

The claimant avers that during the months of August and September, 1898, he brought forward the said sulphur in another vessel belonging to the same owners,

under the terms of a stipulation with the libellants, a 233
copy of which is hereto annexed, marked Exhibit "B" and made a part hereof, and delivered the same to the libellants at the port of New York, who duly accepted the same.

He is informed and believes that libellants have realized by the sale of the said sulphur more than its invoice price, and that, accordingly, under the above quoted provision of the bills of lading, the libellants have not suffered any damages in the premises which are recoverable in this action. 234

(6.) Upon information and belief, the plaintiff alleges that, by the Italian law, which prevailed at the port of shipment, either party to a contract of carriage can withdraw from it without being liable for damages when, before the vessel has left the jurisdiction, war has been declared, in consequence of which the vessel or the goods to be shipped according to the contract of affreightment can no longer be considered free, and would be liable to risk of capture. 235

In consequence of the declaration of war, and of the royal proclamation hereinbefore referred to, the cargo of the *Styria* could no longer be considered free, and was liable to risk of capture. The claimant, accordingly, was justified, under Italian law, in withdrawing from the contract and relanding and storing the cargo at the risk of and for the account of the shippers, and said vessel is not liable in damages for the acts of the master in so doing.

SEVENTH.—All and singular the premises of this 236
answer is true.

Wherefore, the claimant prays that the said libel may be dismissed with costs, or that such other decree may be made as the justice of the cause may require.

CONVERS & KIRLIN,
Proctors for Claimant.

237 SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

E. B. CONVERS, being duly sworn, says that he is one of the proctors for the claimant herein, and that the foregoing answer is true to the best of his knowledge, information and belief, derived from communications received from the owners of the vessel and their agents, and from the testimony of the master herein.

Deponent further says that the reason why this an-
238 swer is not verified by the claimant is that he is absent from the United States.

E. B. CONVERS.

Sworn to before me this 1st }
day of December, 1898. }
JAMES T. KILBRETH,
[SEAL.] Notary Public,
New York County.

[Endorsed :]—Answer filed Dec'r 1st, 1898.

239 Exhibits A and B annexed to foregoing answer being the same as Exhibits A and B annexed to answer in suit of Morgan *v. Styria*, are omitted here by consent.

240

241

To the Honorable Addison Brown, United States District Judge for the Southern District of New York:

The libel of Austro-Americana Steamship Company, owner of the steamships *Styria* and *Abbazia*, against 3,250 cantars of brimstone, owned by James L. Morgan & Co., ex-steamship *Abbazia*, in a cause of contract, civil and maritime, alleges as follows:

First.—The libellant, Austro-Americana Steamship 242
Company, is a corporation organized and existing under the laws of the Austro-Hungarian Empire, with its principal office at Trieste, and owner of the Austro-Hungarian steamships *Styria* and *Abbazia*.

Second.—That, on or about the 23rd day of April, 1898, there was shipped by John Sofio & Co., on board the steamship *Styria*, at the port of Gergenti, in the Kingdom of Italy, a quantity of crude brimstone in bulk, said by the shippers to consist of 3,250 cantars, 243
or about 250 tons, to be delivered at the port of New York to Brown Brothers & Co., subject to certain terms, conditions and exceptions set forth in the bill of lading issued therefor by said vessel.

On or about the 27th day of April, 1898, after said brimstone had been loaded, war having been declared between the United States and Spain, whereby said brimstone became and was contraband of war, the master of the *Styria* in accordance with the terms of the bill of lading issued 244
for the brimstone, and within his rights under the law, caused said brimstone to be discharged from the *Styria* and placed in store with a mercantile agent at the port of Empodocle, the seaport of Girgenti, and at the shipper's risk and expense, and deposited in the Post Office a letter addressed to the shippers, and to the consignees of the merchandise, stating that the goods had been landed, and with whom deposited, and were at the shippers' risk and expense.

That the bill of lading issued for the brimstone contained the following exception:

"Restraint of princes and rulers or people * * * excepted."

That the outbreak of war between Spain and the United States rendered the transportation of said brimstone to New York unlawful as contraband of war, and that if said voyage had been attempted, the cargo of brimstone and the *Styria* would have been liable to seizure by Spanish war vessels, and said risk of seizure, therefore, amounted to a "restraint of princes, rulers or people," and, therefore, released the vessel from any obligation to transport said brimstone.

THIRD—Thereafter, the *Styria* loaded a cargo of fruit and proceeded to the port of New York, where, on her arrival on or about June 28th, 1898, she was arrested in the libel suit now pending in this Court, of James L. Morgan *et al.*, as owners of said brimstone, against said vessel for the non-delivery thereof, in which damages were claimed in the sum of $5,000. Stipulations for value and costs were duly filed by Antonio G. Scopinich, as master and claimant, acting in behalf of this libellant, and said vessel was thereupon released from the custody of the marshal.

Thereafter a stipulation was entered into on the 12th day of August, 1898, between the Proctors for the said James L. Morgan *et al.* and the Proctors for the steamship *Styria* and this libellant, providing that the claimant of the *Styria*, acting for this libellant, should forward the brimstone before mentioned, landed at the port of Empedocle, on the first available steamer from that port to New York, and on delivery of same to the consignees upon the terms specified in the original bill of lading, freight to be paid by the consignees, and the goods upon arrival to be sold and proceeds credited on account of damages, if any, in that suit. It was also provided that the claimant should have a lien on said brimstone for the charges in Sicily against the respective portions, provided claimant was justified in re-landing and storing the cargo as and when he

did, all of which was without prejudice, it being the 249
purpose of the stipulation that the claimant and this libellant should have a lien on the brimstone for the charges and expenses which the libellants Morgan *et al.* would have had to pay if they had undertaken to forward the cargo for their own account. A copy of said stipulation is hereto annexed, marked Exhibit "A," and made a part of this libel.

Fourth.—That libellant despatched the steamship *Abbazia* to Port Empedocle, Girgenti, where she ar- 250
rived on or about the 24th day of August, 1898, and pursuant to the terms of said stipulation, thereafter paid the charges in Sicily against said brimstone, and loaded it, and on or about September 4th, proceeded therewith to the port of New York.

The *Abbazia* was wrongfully detained for a period of three days over and above the time she would have ordinarily and otherwise have consumed in loading said cargo of brimstone, by reason of the failure of the shippers of said brimstone, which is the subject of this 251
libel, and of James L. Morgan & Co. and their agents, to furnish said brimstone for shipment at Port Empedocle, or to give the proper instructions and facilities for its loading, or make the necessary arrangements in accordance with the stipulation hereto annexed. That the reasonable value of the use per day of the steamship *Abbazia* is $125, and the detention chargeable against said brimstone, therefore, amounts to $375.

That the libellant laid out and expended certain sums for unloading and landing of said sulphur from the 252
Styria, also for the storage, lighterage, watching, legal expenses and loading of said cargo, as well as other incidental charges, all of which were necessary and reasonable, and expended for the benefit of said cargo, and on its credit, and for its preservation, and in accordance with the terms of the bill of lading issued therefor, both by the *Styria* and the *Abbazia*, by the terms of the stipulation hereto annexed, and by the maritime law, were and are a charge and lien against said brimstone enforceable by this Court.

253 Said charges and expenses amount to about the sum of $925.

The steamship *Abbazia* has now arrived at the port of New York, and has discharged or will be discharging said brimstone during the currency of this process, into lighters at the foot of Forty-second street, Brooklyn, and payment of the charges and expenses herein set forth has been demanded of the consignees and refused.

Fifth.—That said brimstone is now within the juris-
254 diction of this Honorable Court, and subject on behalf of libellant to a lien by the general maritime law, and by virtue of said stipulation and bills of lading for all the charges and expenses herein set forth.

Sixth.—All and singular the premises of this libel are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore libellant prays that process in due form of law may issue against said brimstone, and that the
255 same may be condemned and sold to pay the said claim, and that all persons intervening for their interest therein may be cited to appear and answer all and singular the matters aforesaid, and for such other and further relief as it may be entitled to receive.

Convers & Kirlin,
Proctors for Libellant.

Southern District of New York, }
City and County of New York, } ss.:

256

E. B. Convers, being duly sworn, deposes and says that he is one of the proctors for the libellant herein; that the foregoing libel is true to the best of his knowledge, information and belief, derived from statements made by the masters of the steamships *Abbazia* and *Styria*, and that the reason this verification is not made by the libellant is that it is a foreign corporation, with its principal office at Trieste, Austria, and none of its officers resides or is now within the district, or within one hundred miles of the place of trial.

E. B. Convers.

257

Sworn to before me this 30th day of September, 1898.

JAMES T. KILBRETH,
[SEAL.] Notary Public,
New York County.

[Endorsed :]—Libel filed October, 1, 1998.

UNITED STATES DISTRICT COURT, 258

SOUTHERN DISTRICT OF NEW YORK.

MALCOMSON *et al.*

AGAINST

The Steamship "STYRIA," etc.

MORGAN *et al.* 259

AGAINST

The Same.

PARSONS *et al.*

AGAINST

The Same. 260

MUNROE *et al.*

AGAINST

The Same.

It is stipulated and agreed between the parties as follows :

1. The claimant shall forward the cargo landed *ex*

261 *Styria*, at Port Empedocle, on the first available steamer from that port to New York, and shall deliver the same to the consignees, upon the terms, and for the freight specified in the original bills of lading, the consignees to receive the same and to pay the agreed freight on right and true delivery; the goods upon arrival to be sold at current market rates, and the proceeds, less charges incurred, to be credited on account of the damages, if any, recovered in these cases by the libellants.

262 2. The claimant shall have a lien on the portions of the cargo to be delivered to the several libellants for the respective amounts of the charges against the respective portions of the brimstone in Sicily, provided the claimant was justified in re-landing and storing the cargo at Port Espedocle as and when he did. If it be held that the re-landing and storage of the cargo was not justified, then the said brimstone shall be free from any lien on account of the aforesaid charges or ex-
263 penses, except freight, which is provided for in paragraph first of this stipulation.

It is the purpose and intent of this paragraph of the stipulation to provide that if the claimant was justified in re-landing and storing the cargo as and when he did, he shall have a lien upon the respective consignments for their respective proportions of the charges and expenses against the same, which the libellants would have had to pay (exclusive of the charges provided for in the first paragraph of this stipulation), if
264 they undertook to forward the cargo for their own account.

3. This stipulation and anything done by any party under it, shall be deemed to be wholly without prejudice in the pending suits, except as herein provided.

New York, August 12th, 1898.

SULLIVAN & CROMWELL,
Proctors for Malcomson *et al.*

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Morgan *et al.*

BOWERS & SANDS,
Proctors for Parsons *et al.*
STERN & RUSHMORE,
Proctors for Monroe *et al.*
CONVERS & KIRLIN,
Proctors for SS. *Styria.* 265

The foregoing stipulation marked "Exhibit A," which is also annexed to the three other libels of the Austro-Americana SS. Co. against consignments of brimstone and is therefore not refunded in connection therewith by consent. 266

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

James L. Morgan, John M. Goetchius, James L. Morgan, Jr.; Henry K. Goetchius and Lancaster Morgan, owners and claimants of 3,250 cantars of brimstone, as the same are proceeded against upon the libel of Austro-Americana Steamship Company, in an alleged cause of contract, civil and maritime, answers said libel as follows: 267

FIRST.—The claimants admit the first article of said libel.

SECOND.—The claimants admit the allegations of the first paragraph of the second article of said libel.

They admit that the master of the *Styria* caused the brimstone to be discharged and placed in store at the port of Empodocle, the sea port of Girgenti; that the bill of lading issued for the brimstone contained the exception the "restraint of princes, rulers or people excepted." 268

Further answering, the claimants deny each and every other allegation of the second article of said libel.

THIRD.—The claimants admit the third article of said libel.

269 FOURTH.—The claimants admit the allegations of the first paragraph of the fourth article of said libel. They also admit that the arrival of the steamship *Abbazia* in New York and the discharge of certain brimstone in Brooklyn, and the refusal of certain alleged charges and expenses.

Further answering, they deny each and every allegation of the fourth article of said libel.

FIFTH.—The claimants admit that said brimstone was
270 within the jurisdiction of this Court at the time of the filing of the libel herein, and they deny the other allegation of the fifth article of said libel.

SIXTH.—The claimants admit the jurisdiction of the Court and deny the other allegation of the sixth article of said libel.

All and singular the premises are true.

Wherefore, the claimants pray that the libel herein
271 may be dismissed with costs.

JAMES L. MORGAN, JR.

Sworn to before me this 14th day of February, 1899.

JAMES T. KILBRETH,
Notary Public,
New York County.

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Claimants.

272 Endorsed:—Answer filed February 15, 1898.

To the Honorable ADDISON BROWN, United States District Judge for the Southern District of New York: 273

The libel of Austro-Americana Steamship Compnp, owner of the steamships *Styria* and *Abbazia*, against 4550 cantars of brimstone, owned by Schuyler L. Parsons, *ex* steamship *Abbazia*, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—The libellant Austro-Americana Steamship 274
Company is a corporation organized and existing under the laws of the Austro-Hungarian Empire, with its principal office at Trieste, and owner of the Austro Hungarian steamships *Styria* and *Abbazia*.

SECOND.—That on or about the 21st day of April, 1898, there was shipped by Ferdinand Baller & Co., on board the steamship *Styria*, at the port of Girgenti, in the Kingdom of Italy, a quantity of crude brimstone in bulk, in two lots, said by the shippers to consist of 275
1300 cantars, or about 100 tons, and 3250 cantars, or about 250 tons each, to be delivered at the port of New York, to C. J. Hambro & Son, and to order respectively, subject to certain terms, conditions and exceptions set forth in the bills of lading issued therefor by said vessel.

On or about the 27th day of April, 1898, after said brimstone had been loaded, war having been declared between the United States and Spain, whereby said brimstone became and was contrabrand of war, the 276
master of the *Styria*, in accordance with the terms of the bill of lading issued for the brimstone, and within his rights under the law, caused said brimstone to be discharged from the *Styria* and placed in store with a mercantile agent at the port of Empedocle, the seaport of Girgenti, and at the shipper's risk and expense, and deposited in the postoffice a letter addressed to the shippers, and to the consignees of the merchandise, stating that the goods had been landed, and with whom deposited, and were at the shippers' risk and expense.

277 That the bills of lading issued for the brimstone contained the following exceptions:

"Restraint of princes and rulers of people * * * excepted."

That the outbreak of war between Spain and the United States rendered the transportation of said brimstone to New York unlawful as contrabrand of war, and that if said voyage had been attempted the cargo of brimstone and the *Styria* would have been liable to
278 seizure by Spanish war vessels, and said risk of seizure, therefore, amounted to a "restraint of princes, rulers or people," and, therefore, released the vessel from any obligation to transport said brimstone.

THIRD.—Thereafter the *Styria* loaded a cargo of fruit, and proceeded to the port of New York, where, on her arrival on or about June 20th, 1898, she was arrested in the libel suit, now pending in this Court, of Schuyler L. Parsons, as owner of said brimstone, against said vessel for the non-delivery thereof, in
279 which damages were claimed in the sum of $11,200. Stipulations for value and costs were duly filed by Antonio G. Scopinich, as master and claimant, acting in behalf of this libellant, and said vessel was thereupon released from the custody of the marshal.

Thereafter, a stipulation was entered into on the 12th day of August, 1898, between the proctors for the said Parsons and the proctors for the steamship *Styria* and this libellant, providing that the claimant of the *Styria*, acting for this libellant, should forward
280 the brimstone before mentioned, landed at the port of Empedocle, on the first available steamer from that port to New York, and on delivery of same to the consignees, upon the terms specified in the original bills of lading, freight to be paid by the consignees, and the goods upon arrival to be sold and proceeds credited on account of damages, if any, in that suit. It was also provided that the claimant should have a lien on said brimstone for the charges in Sicily against the respective portions, provided

claimant was justified in re-landing and storing the cargo as and when he did; all of which was without prejudice, it being the purpose of the stipulation that the claimant and this libellant should have a lien on the brimstone for the charges and expenses which the libellant Parsons would have had to pay, if he had undertaken to forward the cargo for his own account. A copy of said stipulation is hereunto annexed, marked Exhibit "A," and made a part of this libel. 281

FOURTH.—That libellant despatched its steamship *Abbazia* to Port Empedocle, Girgenti, where she arrived on or about the 24th day of August, 1898, and pursuant to the terms of said stipulation, thereafter paid the charges in Sicily against said brimstone, and loaded it, and on or about September 4th, proceeded therewith to the port of New York. 282

The *Abbazia* was wrongfully detained for a period of three days over and above the time she would have ordinarily and otherwise have consumed in loading said cargo of brimstone, solely by reason of the failure of the shippers of said brimstone, which is the subject of this libel, and of said Schuyler L. Parsons and his agents, to furnish said brimstone for shipment at Port Empedocle, or to give the proper instructions and facilities for its loading, or make the necessary arrangements in accordance with the stipulation hereto annexed. That the reasonable value of the use per day of the steamship *Abbazia* is $125, and the detention chargeable against said brimstone, therefore, amounts to $375. 283

That the libellant laid out and expended certain sums for unloading and landing said sulphur from the *Styria*, also for the storage, lighterage, watching, legal expenses and loading of said cargo, as well as other incidental charges, all of which were necessary and reasonable, and expended for the benefit of said cargo, and on its credit, and for its preservation, and in accordance with the terms of the bills of lading issued therefor, both by the *Styria* and the *Abbazia*, by the terms of the stipulation hereto annexed, and by the 284

285 maritime law, were and are a charge and lien against said brimstone, enforceable by this Court. Said charges and expenses amount to about $1,300. The steamship *Abbazia* has now arrived at the port of New York, and has discharged or will be discharging said brimstone during the currency of this process into lighters at the foot of Forty-second-street, Brooklyn, and payment of the charges and expenses herein set forth has been demanded of the consignees, and refused.

286 FIFTH.—That said brimstone is now within the jurisdiction of this Honorable Court, and subject on behalf of libellant to a lien, by the general maritime law, and by virtue of said stipulation and bills of lading for all the charges and expenses herein set forth.

SIXTH.—All and singular the premises of this libel are true, and within the admiralty and maritime juris diction of this Honorable Court.

287 Therefore, libellant prays that process in due form of law may issue against said brimstone, and that the same may be condemned and sold to pay the said claim, and that all persons intervening for their interest therein may be cited to appear and answer all and singular the matters aforesaid, and for such other and further relief as it may be entitled to receive

CONVERS & KIRLIN,
Proctors for Libellant.

288 SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

E. B. CONVERS, being duly sworn, deposes and says that he is one of the proctors for the libellant herein; that the foregoing libel is true to the best of his knowledge, information and belief, derived from statements made by the masters of the steamships *Abbazia* and *Styria*, and that the reason this verification is not made by the libellant is that it is a foreign corporation, with its principal office at Trieste, Austria,

and none of its officers resides or is now within the district, or within one hundred miles of the place of trial. 289

E. B. Convers.

Sworn to before me this day of , 1898.

James T. Kilbreth,
[seal.] Notary Public,
New York County.

[Endorsed:]—Libel filed Oct. 1, 1898. 290

To the Honorable Addison Brown, United States District Judge for the Southern District of New York:

The answer of Schuyler L. Parsons, claimant of the 4,550 cantors of Brimstone to the libel of Austro-Americana Steamship Company, against said merchandise, in a cause of contract, civil and maritime, alleges as follows: 291

First.—He admits the allegations of the first paragraph of the libel and those of the second concerning the shipment of said brimstone; but he denies that by the declaration of war between the United States of America and the Kingdom of Spain, the said brimstone became or was contraband of war on the 27th day of April, 1898. He denies that the action of the master of the *Styria* in discharging the said brimstone at Port Empedoele, was in accordance with the terms of the bill of lading, or was within the rights of the master of said *Styria;* but he admits the allegation as to the discharge of said brimstone. 292

Second.—He admits that the bill of lading contains a clause excusing the master from delivering said brimstone as agreed in and by said bill of lading in case del very was prevented by the restraint of princes and rulers or people; but he alleges that the said ex-

293 ception in no way authorized or permitted the said master to act as he did in regard to said brimstone, and that the said exception had no application to the facts of this case as they existed; and he denies that the master of said *Styria* was in any just or moral sense, or in any legal way whatsoever prevented from making right and true delivery of said brimstone at the Port of New York, on the voyage for which said brimstone was shipped; and he alleges further that the said master in discharging said brimstone at Port
294 Empedocle was not influenced at all by said clause or by any of the causes or reasons therein mentioned, or even by fear thereof.

And claimant denies that the outbreak of war between the United States and Spain rendered the transportation of said brimstone to New York unlawful.

He denies that if said voyage had been attempted, the cargo of brimstone or the *Styria* would have been liable to seizure by Spanish war vessels, or that even if there had been such risk, the same would have
295 amounted to "restraint of princes, rulers or people" within the true meaning of said bill of lading, and that it released the said ship from any obligation to transport said brimstone.

THIRD.—Claimant admits that the *Styria* after the delivery of said brimstone, loaded a cargo of fruit, and he alleges that the master of said vessel put the said cargo of brimstone overboard on purpose to enable him to carry said cargo of fruit, which was a more lucra-
296 tive cargo to carry for the ship in the way of freight; he admits the arrival of said vessel at New York, her arrest in the suit in this Court mentioned in the libel herein; the giving of stipulations and the release of said vessel. He admits the making of the stipulation referred to and set forth as Exhibit "A" to the libel; but the meaning and effect thereof as stated by the libellant he disputes and avers that the same is for this Court to construe.

FOURTH.—Claimant admits that the said brimstone,

but not all thereof, was brought forward from Girgenti 297
to New York by the *Abbazia*; but he denies that the said ship was detained at Girgenti by any act or negligence of the shippers of said brimstone or of claimant or his agents; and he denies that $123. is the reasonable value of the use of said vessel per day, and that said or any other sum for detention is chargeable against said brimstone.

And claimant has no knowledge or information sufficient to form a belief as to the sums alleged by libellant to have been disbursed; and he denies that they 298
were fair and proper charges in any way chargeable against said brimstone, or were or are a lien upon the same.

And claimant further answering and repeating the allegations, admissions and denials of the foregoing defenses, alleges:

First.—That the said ship *Styria* began loading said brimstone on the 21st day of April, 1898; that the said master then knew that there was imminent probability 299
of a state of war between the United States and Spain; that he continued loading said sulphur until on the 21st day of April, 1898, when said loading was completed, and the said *Styria* cleared from said port of Girgenti for New York; that thereupon the master of said vessel received orders from Burrell & Sons, of Bologna, the managing owners of said vessel, to discharge the said sulphur and take a cargo of green fruit at Palermo, Italy, for New York; that thereupon said master began to discharge said sulphur at 300
the place where it was loaded, without departing from said port; that he gave no word to the shippers thereof, or to the claimants or owners thereof, of his intention to discharge the same, and not until the 7th day of May, 1898, when the said sulphur was all unloaded, did he, said master, notify the shippers, owners or consignees thereof concerning either his intention or his actions regarding the same.

And claimant further says that the said unloading was in (gross and immoral) disregard and in violation

301 of the contract of carriage and the duties of said master. That the carriage of said brimstone was not unlawful or illegal, and did not render the said ship liable to seizure ; that as a matter of fact, prior to the declaration of war by Spain, the question of whether sulphur from Italian ports to the United States was contraband or not, was a matter of public discussion, and that almost immediately upon the declaration of hostilities, it was publicly known and reported in the daily papers of Italy, particularly in those parts and
302 ports whence sulphur was commonly exported, and was generally discussed among shipping people at such places and at the consulates and prefectures in such ports and places, that the Spanish Government would not hold to be contraband of war crude sulphur shipped on neutral vessels from Italian ports; all of which public news and discussions were known to the said master, and if not, ought to have been;—that at least it was his duty (and common honesty) before unloading the said goods, having issued his negotiable bill of lading
303 therefor, to have notified those with whom he had contracted regarding the carriage of the same ; before unloading the same ; that it was his duty in view of the public negotiations then pending for the freedom of sulphur, to have waited a reasonable time for said negotiations to bear fruit; that as a matter of fact on and prior to the 20th day of April, 1898, the Spanish Government had notified the Italian Government that it would not seize crude sulphur in neutral vessels destined for United States
304 ports, shipped from Italy ; that said information was well known to said master ; and was publicly disseminated by the Italian newspapers and public officials.

That prior to the completed discharge of said sulphur and to the time of sailing from said port of Girgenti, there was not even the (false) excuse of fear of restraint of princes, rulers of people, regarding the said sulphur available to the said master, as upon the 6th day of May, 1898, public notice was conveyed to said master that sulphur from Italy in neutral ships

destined for United States ports would not be molested by Spanish vessels, and as a fact, although at various dates between the 20th of April and the 11th of May, 1898, several neutral ships sailed from said port of Girgenti with sulphur for United States ports, not one of them was even overhauled by any Spanish vessel on account of carrying sulphur. 305

Claimant further says that at no time was there any interdict or blockade of the Port of New York, either notified or *de facto*, preventing the entry of the *Styria* or the discharge of her cargo therein; nor was it ever for any reason during the said war, unsafe for any vessel to enter or discharge there; and as a fact the *Styria* did sail for and arrive at and enter and discharge at the said port of New York, on or about the day of June, 1898. 306

SECOND.—Claimant alleges that no clause of the bill of lading exempting the said ship from the liability to transport the said brimstone, or authorizing it to break the voyage, as agreed by said bill of lading, and the said transportation not being illegal, the vessel was absolutely bound to bring forward the said merchandise, or pay the damage for her failure so to do, and that she cannot lawfully charge the expenses of her wrongful, illegal and improvident undelivery upon the claimant. 307

THIRD.—Claimant further avers that the libellant ought not to maintain its action, because having issued the bill of lading, its exceptions look to a transportation and discharge at a port nearby to the port of discharge and not to a discharge to evade transportation. 308

All and singular the premises of this answer are true.

Wherefore, claimant prays that the said libel may be dismissed with costs, or that such other decree may be made as justice and right dealing may require.

BOWERS & SANDS,
Proctors for Claimant.

309 SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss.:

SCHUYLER L. PARSONS, being duly sworn, says: I am the agent of the plaintiff in this suit; I have read the foregoing answer and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe it to be true. My knowledge and information are
310 derived from the papers as the matters which have been in case; from the correspondence between the parties and their agents; from the Italian newspapers published in Sicily and from public events. The claimant is not within the County of New York where in I reside.

SCHUYLER L. PARSONS.

Sworn to before me this 31st }
day of December, 1898. }

WILLIAM C. BOWERS,
311 Notary Public,
N. Y. County.

[Endorsed:]—Answer filed, December 31, 1898.

312

313 To the Honorable ADDISON BROWN, United States District Judge, for the Southern District of New York:

The libel of Austro-Americana Steamship Company, owner of the steamships *Styria* and *Abbazia*, against 1,500 tons of brimstone, owned by Alfred S. Malcolmson, *ex*-steamship *Abbazia*, in a cause of contract, civil and maritime, alleges as follows:

FIRST.—The libellant, Austro-Americana Steamship Company, is a corporation organized and existing under the laws of the Austro Hungarian Empire, with its principal office at Trieste, and owner of the Austro-Hungarian Steamships *Styria* and *Abbazia*. 314

SECOND.—That on or about the 21st day of April, 1898, there was shipped by Emil Fog & Sons on board the steamship *Styria*, at the port of Girgenti, in the Kingdom of Italy, a quantity of crude brimstone in bulk, said by the shippers to consist of 1,500 tons, to be delivered at the port of New York, to the Canadian 315 Bank of Commerce, subject to certain terms, conditions and exceptions set forth in the bills of lading issued therefor by said vessel.

On or about the 27th day of April, 1898, after said brimstone had been loaded, war having been declared between the United States and Spain, whereby said brimstone became and was contraband of war, the master of the *Styria*, in accordance with the terms of the bills of lading issued for the brimstone, and with his rights under the 316 law, caused said brimstone to be discharged from the *Styria* and placed in store with a mercantile agent at the port of Empedocle, the seaport of Girgenti, and at the shippers' risk and expense, and deposited in the Post-Office a letter addressed to the shippers, and to the consignees of the merchandise, stating that the goods had been landed, and with whom deposited, and were at the shippers' risk and expense.

That the bills of lading, issued for the brimstone, contained the following exception:

317 "Restraint of princes and rulers or people * * * excepted."

That the outbreak of war between Spain and the United States, rendered the transportation of said brimstone to New York unlawful as contraband of war, and that if said voyage had been attempted, the cargo of brimstone and the *Styria* would have been liable to seizure by Spanish war vessels, and said risk of seizure therefore amounted to a "restraint of princes, rulers or people," and, therefore, released the vessel
318 from any obligation to transport said brimstone.

THIRD.—Thereafter, the *Styria* loaded a cargo of fruit, and proceeded to the port of New York, where, on her arrival on or about June, 28th, 1898, she was arrested in the libel suit, now pending in this Court, of Alfred S. Malcolmson, as owner of said brimstone, against said vessel, for the non delivery thereof, in which damages were claimed in the sum of $50,000. Stipulations for value and costs were duly filed by
319 Antonio G. Scopinich, as master and claimant, acting in behalf of this libellant, and said vessel was thereupon released from the custody of the marshal.

Thereafter, a stipulation was entered into on the 12th day of August, 1898, between the proctors for the said Malcolmson and the proctors for the steamship *Styria* and this libellant, providing that the claimant of the *Styria*, acting for this libellant, should forward the brimstone before mentioned, landed at the port of Empedocle, on the first available steamer from that
320 port to New York, and on delivery of same to the consignees, upon the terms specified in the original bills of lading, freight to be paid by the consignees, and the goods upon arrival to be sold and proceeds credited on account of damages, if any, in that suit. It was also provided that the claimant should have a lien on said brimstone for the charges in Sicily against the respective portions, provided claimant was justified in re-landing and storing the cargo as and when he did; all of which was without prejudice, it being the purpose of the stipulation that the claimant and this libellant should have a lien on the brimstone for the charges

and expenses against the same, which the libellant Malcolmson would have had to pay, if he had undertaken to forward the cargo for his own account. A copy of said stipulation is hereto annexed. marked Exhibit "A," and made a part of this libel. 321

FOURTH.—That libellant despatched its steamship *Abbazia* to Port Empedocle, Girgenti, where she arrived on or about the 24th day of August, 1898, and pursuant to the terms of said stipulation, thereafter paid the charges in Sicily against said brimstone, and loaded it, and on or about September 4th proceeded therewith to the port of New York. 322

The *Abbazia* was wrongfully detained for a period of three days over and above the time she would have ordinarily and otherwise have consumed in loading said cargo of brimstone, by reason of the failure of the shippers of said brimstone, which is the subject of this libel, and of said Alfred S. Malcolmson and his agents, to furnish said brimstone for shipment at port Empedocle, or to give the proper instructions and facilities for its loading, or make the necessary arrangements in accordance with the stipulation hereto annexed. That the reasonable value of the use per day of the steamship *Abbazia* is $125, and the detention chargeable against said brimstone, therefore, amounts to $375. 323

That the libellant laid out and expended certain sums for unloading and landing said sulphur from the *Styria*, also for the storage, lighterage, watching, legal expenses and loading of said cargo, as well as other incidental charges, all of which were necessary and reasonable, and expended for the benefit of said cargo, and on its credit, and for its preservation, and in accordance with the terms of the bills of lading issued therefor, both by the *Styria* and the *Abbazia*, by the terms of the stipulation hereto annexed, and by the maritine law, were and are a charge and lien against said brimstone enforceable by this Court. Said charges and expenses amount to about $5,625. The steamship *Abbazia* has now arrived at the port of New York, and has discharged or will be discharging said brimstone during the currency of 324

325 this process, into lighters at the foot of Forty-second street, Brooklyn, and payment of the charges and expenses herein set forth has been demanded of the consignees, and refused.

Fifth.—That said brimstone is now within the jurisdiction of this Honorable Court, and subject on behalf of libellant, to a lien, by the general maritime law, and by virtue of said stipulation and bills of lading for all the charges and expenses herein set forth.

326 Sixth.—All and singular the premises of this libel are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, libellant prays that process in due form of law may issue against said brimstone, and that the same may be condemned and sold to pay the said claim, and that all persons intervening for their interest therein may be cited to appear and answer all and singular the matters aforesaid, and for such other and further relief as it may be entitled to receive.

327

Convers & Kirlin,
Proctors for Libellant.

Southern District of New York, }
City and County of New York, } ss.:

E. B. Convers, being duly sworn, deposes and says that he is one of the proctors for the libellant herein; that the foregoing libel is true to the best of his knowledge, information and belief, derived from statements made by the masters of the steamships *Abbazia* and
328 *Styria*, and that the reason this verification is not made by the libellant is that it is a foreign corporation, with its principal office at Trieste, Austria, and none of its officers reside or are now within the district, or within one hundred miles of the place of trial.

E. B. Convers.

Sworn to before me this 30th }
day of September, 1898. }

James T. Kilbreth,
Notary Public,
New York County.

[Endorsed:]—Libel filed Oct. 1, 1898.

329

UNITED STATES DISTRICT COURT, Southern District of New York, } ss.:

AUSTRO-AMERICANA STEAMSHIP COMPANY

AGAINST

1500 Tons Brimstone, *ex* Steamship "ABBAZIA."

330

The answer of Alfred S. Malcolmson, owner and claimant of said brimstone, to the libel of the Austro-Americana Steamship Company, the libellant herein, alleges and shows to the Court as follows:

FIRST.—This claimant has no knowledge as to the allegations in Article First of said libel contained, and requires proof thereof.

331

SECOND.—Claimant admits that on or about April 21st, 1898, 1500 tons of brimstone were shipped on board the steamship *Styria*, at the port of Girgenti, to be delivered at the port of New York, to the Canadian Bank of Commerce, subject to the terms of certain bills of lading issued therefor, as alleged in the libel; and that on or about April 27th the master of the *Styria* caused said brimstone to be discharged from the *Styria*, and placed in store at the port of Empedocle and notified the consignees of the merchandise that said brimstone had been so discharged; but denies that said master so acted in accordance with the terms of the bill of lading issued for said brimstone, or with his rights under the law, and alleges that the discharge of said brimstone was altogether wrongful and without justification.

332

Admits that the bills of lading issued for said brimstone contain the exception of restraint of princes and rulers or people, and admits that war had broken out

333 between the United States and Spain, but denies that at the time of the discharge of said brimstone the transportation thereof to New York was unlawful, and that the *Styria* or said cargo would have been liable to seizure by Spanish war vessels, and denies that there was any risk of seizure or any restraint of princes, rulers or people, or any other matter, cause or thing which released the vessel from its obligation to transport said brimstone. And this claimant further alleges that at the time when said brimstone was discharged
334 the master of the *Styria* had notice that an agreement had been reached between the Italian and Spanish Governments by which the Spanish Government had agreed not to interfere with the export of brimstone from Italian ports, which agreement had, in fact, actually been made, but in spite of such notice and in violation of his duty, he caused said brimstone to be discharged without any excuse for such action.

THIRD.—Admits that thereafter the *Styria* loaded a
335 cargo of fruit and proceeded to the port of New York, that on or about June 28th, 1898, she was arrested in a suit brought by this claimant as libellant against said vessel for failure to deliver said brimstone, in which damages were claimed in the sum of $50,000, and admits that stipulations for value and costs were duly filed by the master of said vessel, and that she was thereupon released from the custody of the marshal. Claimant also admits that the stipulation alleged in Article Three of the libel was entered into between the
336 Proctors for this claimant and the Proctors for said steamship.

FOURTH.—Admits that the steamship *Abbazia* loaded said brimstone at the port of Empodcle, and on or about September 4th, 1898, proceeded therewith to the port of New York Admits that she arrived at New York and has discharged said brimstone and that payment of certain charges and expenses has been demanded of the consignees and refused; but denies that the *Abbazia* was wrongfully detained for any period by

reason of any failure or neglect of this claimant or his agents; and denies that the libellant has any claim against said brimstone for any demurrage on account of any delay of said vessel. 337

As to the other allegations contained in Article Fourth of the libel, claimant has no knowledge and requires proof thereof.

FIFTH.—Admits that said brimstone is now within the jurisdiction of this Court, but denies that it is subject to any lien on behalf of libellant, either by general maritime law or by virtue of any stipulation or bill of lading for any charges or expenses or any other sum. 338

Wherefore the claimant prays that this Honorable Court will pronounce against the demand of the libellant, in its libel before mentioned, with costs.

ALFRED S. MALCOLMSON,
Claimant.

SULLIVAN & CROMWELL,
Proctors for Claimant.

339

STATE OF NEW YORK, }
County of New York, } ss.:

ALFRED S. MALCOLMSON, being duly sworn, deposes and says that he is the claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

340

ALFRED S. MALCOLMSON.

Sworn to before me this }
7th day of October, 1898. }

EDWARD T. McLAUGHLIN, JR.,
Notary Public No. 21,
New York County,
New York.

[Endorsed:]—Answer filed Oct. 8, 1898.

341 To the Honorable ADDISON BROWN, United States District Judge, for the Southern District of New York:

The libel of Austro-Americana Steamship Company, owner of the steamships *Styria* and *Abbazia*, against one hundred tons of brimstone, owned by John Munroe & Co., *ex* steamship *Abbazia*, in a cause of contract, civil and maritime, alleges as follows:

342 FIRST.—The libellant, Austro-Americana Steamship Company, is a corporation, organized and existing under the laws of the Austro-Hungarian Empire, with its principal office at Trieste, and owner of the Austro-Hungarian steamships *Styria* and *Abbazia*.

SECOND.—That on or about the 24th day of April, 1898, there was shipped by F. Amato & Co., on board the steamship *Styria*, at the port of Girgenti, in the kingdom of Italy, a quantity of crude brimstone in
343 bulk, said by the shippers to consist of one hundred tons, to be delivered at the port of New York to the order of John Munroe & Co., subject to certain terms, conditions and exceptions set forth in the bills of lading issued therefor by said vessel,

On or about the 27th day of April, 1898, after said brimstone had been loaded, war having been declared between the United States and Spain, whereby said brimstone became and was contraband of war, the master of the *Styria*, in accordance with the terms of
344 the bills of lading issued for the brimstone, and with his rights under the law, caused said brimstone to be discharged from the *Styria* and placed in store with a mercantile agent at the port of Empedocle, the seaport of Girgenti, and at the shippers' risk and expense, and deposited in the Post Office a letter addressed to the shippers, and to the consignees of the merchandise, stating that the goods had been landed, and with whom deposited, and were at the shippers' risk and expense.

That the bills of lading issued for the brimstone

contained the following exception: "Restraint of 345
princes and rulers or people * * * excepted."

That the outbreak of war between Spain and the United States rendered the transportation of said brimstone to New York unlawful as contraband of war, and that if said voyage had been attempted, the cargo of brimstone and the *Styria* would have been liable to seizure by Spanish war vessels, and said risk of seizure therefore amounted to a "restraint of princes, rulers or people," and therefore released the vessel from any obligation to transport said brimstone. 346

THIRD.—Thereafter the *Styria* loaded a cargo of fruit, and proceeded to the port of New York, where, on her arrival, on or about the 28th of June, 1898, she was arrested in the libel suit, now pending in this Court, of John Munroe *et al.*, as owners of said brimstone, against said vessel, for the non-delivery thereof, in which damages were claimed in the sum of $3,400. Stipulations for value and costs were duly filed by Antonio G. Scopinich, as master and claimant, acting 347
in behalf of this libellant, and said vessel was thereupon released from the custody of the marshal.

Thereafter a stipulation was entered into on the 12th day of August, 1898, between the proctors for the said John Munroe *et al.*, and the proctors for the steamship *Styria*, and this libellant, providing that the claimant of the *Styria*, acting for this libellant, should forward the brimstone before mentioned, landed at the port of Empedocle, on the first available steamer from that port to New York, and on delivery of same to the 348
consignees, upon the terms specified in the original bills of lading, freight to be paid by the consignees, and the goods upon arrival to be sold and proceeds credited on account of damages, if any, in that suit. It was also provided that the claimant should have a lien on said brimstone for the charges in Sicily, against the respective portions, provided claimant was justified in re-landing and storing the cargo as and when he did; all of which was without prejudice, it being the purpose of the stipulation that the claimant and this

349 libellant should have a lien on the brimstone for the charges and expenses which the libellants, Munroe *et al.*, would have had to pay if they had undertaken to forward the cargo for their own account. A copy of said stipulation is hereto annexed, marked Exhibit A, and made a part of this libel.

Fourth.—That libellant dispatched its steamship *Abbazia* to Port Empedocle, Girgenti, where she arrived on or about the 24th day of August, 1898, and
350 pursuant to the terms of said stipulation, thereafter paid the charges in Sicily, against said brimstone, and loaded it, and on or about September 4th, proceeded therewith to the port of New York

That the libellant laid out and expended certain sums for unloading and landing of said sulphur from the *Styria*, also for the storage, lighterage, watching, legal expenses and loading of said cargo, as well as other incidental charges, all of which were necessary and reasonable, and expended for the benefit of said
351 cargo, and on its credit, and for its preservation, and in accordance with the terms of the bills of lading issued therefor, and by the terms of the stipulation hereto annexed, and by the maritime law were and are a charge and lien against said brimstone enforceable by this Court. Said charge and expenses amount to about the sum of Three hundred and seventy-five dollars ($375.00). The steamship *Abbazia* has now arrived at the port of New York, and has discharged or will be discharging said brimstone during the currency of
352 this process, into lighters, at the foot of Forty-second street, Brooklyn, and payment of the charges and expenses herein set forth has been demanded of the consignees and refused.

Fifth.—That said brimstone is now within the jurisdiction of this Honorable Court, and subject on behalf of libellant, to a lien, by the general maritime law and by virtue of said stipulation and bills of lading, for all the charges and expenses herein set forth.

SIXTH.—All and singular the premises of this libel are true, and within the admiralty and maritime jurisdiction of this Honorable Court. 353

Wherefore libellant prays that process in due form of law may issue against said brimstone, and that the same may be condemned and sold to pay the said claim, and that all persons intervening for their interest therein, may be cited to appear and answer all and singular the matters aforesaid, and for such other and further relief as it may be entitled to receive. 354

CONVERS & KIRLIN,
Proctors for Libellant.

SOUTHERN DISTRICT OF NEW YORK, } ss.:
City and County of New York, }

E. B. CONVERS, being duly sworn, deposes and says, that he is one of the proctors for the libellant herein; that the foregoing libel is true to the best of his knowledge, information and belief, derived from statements made by the masters of the steamships *Abbazia* and *Styria*, and that the reason this verification is not made by the libellant is that it is a foreign corporation with its principal office at Trieste, Austria, and none of its officers reside or is now within the district, or within 100 miles of the place of trial. 355

E. B. CONVERS.

Sworn to before me this 30th day of September, 1898.

JAMES T. KILBRETH,
[L. S.] Notary Public, 356
New York County.

[Endorsed:]—Libel filed Oct. 1, 1898.

357 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AUSTRO-AMERICANA STEAMSHIP COMPANY

AGAINST

358 One Hundred Tons Brimstone, *ex* Steamer "ABBAZIA."

The answer of John Munroe, Henry W. Munroe, Edgar Lockwood and Frederick de Reiset, bankers doing business in the City of New York under the firm name of John Munroe & Company, owners and claimants of said brimstone, to the libel of the Austro-Americana Steamship Company, libellant, herein al-
359 lege and show to the Court as follows:

FIRST.—This claimant has no knowledge as to the allegations in article first of said libel contained, and requires proof thereof.

SECOND.—Claimant admits that on or about April 21st, 1898, 100 tons of brimstone were shipped on board the steamship *Styria* at the port of Girgenti to be delivered at the port of New York to the claimants subject to the terms of certain bills of lading issued therewith,
360 as alleged in the libel, and that on or about the 27th day of April, 1898, the master of the *Styria* caused said brimstone to be discharged from the *Styria* and placed in store at the port of Empedocle, and notified the consignees of the merchandise that the said brimstone had been so discharged, but deny that said master so acted in accordance with the terms of the bill of lading issued for said brimstone or within his rights under the law, and allege that the discharge of said brimstone was altogether wrongful and without justification.

Admit that the bill of lading issued for said brim- 361
stone contained the exception of restraint of princes and rulers or people, and admit that war had broken out between the United States and Spain, but deny that at the time of the discharge of said brimstone, transportation thereof to New York was unlawful and that the *Styria* or said cargo would have been liable to seizure by Spanish war vessels, and deny that there was any risk of seizure, or any restraint of princes, rulers or people, or any other matter, cause or thing, which released the vessel or the persons in con- 362
trol thereof from its or their obligation to transport said brimstone.

And these claimants further allege that at the time when said brimstone was discharged the master of the *Styria* had notice that an agreement had been reached between the Italian and Spanish governments by which the Spanish government had agreed not to interfere with the export of brimstone from Italian ports, which said agreement had in fact actually been made, but in spite of such notice and in violation of 363
his duty said master caused said brimstone to be discharged without any lawful excuse for such action.

THIRD.—Admit that thereafter the *Styria* loaded a cargo of fruit and proceeded to the port of New York, and that on or about June 28, 1898, she was arrested in a suit brought by these claimants as libellants against said vessel for failure to deliver said brimstone, in which damages are claimed in the sum of three thousand four hundred dollars ($3,400), with interest 364
thereon from the 24th day of April, 1898, and admit that stipulations for value and costs were duly filed by the master of said vessel, and that she was thereupon released from the custody of the marshal.

Claimants also admit that the stipulation alleged in article three of the libel was entered into between the proctors for these claimants and the proctors for said steamship.

FOURTH.—Admit that the steamship *Abbazia* loaded

said brimstone at the port of Empedocle, and on or about September 4th, 1898, proceeded therewith to the port of New York; admit that she has arrived at New York and has discharged said brimstone, and that the payment of certain charges and expenses has been demanded of the claimants and refused, but deny that the *Abbazia* was wrongfully detained for any period by reason of any failure or neglect of these claimants, or their agents, and deny that the libellant has any claim against said brimstone for any demurrage on account of any delay to said vessel.

As to the other allegations contained in article fourth of the libel, claimants have no knowledge and require proof thereof.

FIFTH.—Admit that said brimstone was at the time of the filing of the said libel within the jurisdiction of this Court, but deny that it was or is subject to any lien on behalf of libellant other than by general maritime law or by virtue of any stipulation or bill of lading for any charges or expenses, or any other sum

Wherefore, claimants pray that this Honorable Court will pronounce against the demand of the libellant in this libel, before mentioned, with costs.

JOHN MUNROE & Co.,
Claimants.

STERN & RUSHMORE,
Proctors for Claimants,
40 Wall Street, New York City.

STATE OF NEW YORK, }
County of New York. } ss.:

EDGAR LOCKWOOD, being duly sworn, deposes and says that he is one of the members of the firm of John Munroe & Co., the claimants herein; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon infor-

mation and belief, and that as to those matters he be- 369
lieves it to be true

EDGAR LOCKWOOD.

Sworn to before me this
7th day of January, 1899.
S. INGERSOLL KELTON,
Notary Public,
Kings County.

Certificate filed in New York County.

[Endorsed:]—Answer filed January 9, 1899. 370

Before HON. ADDISON BROWN, U. S. District Judge,
February 14, 1898.

APPEARANCES:

Messrs. COWEN, WING, PUTNAM & BURLINGHAM, for James L. Morgan *et al.* and 250 tons of brimstone.
Messrs. SULLIVAN & CROMWELL—Mr. Hill for Alfred S. Malcomson and a quantity of brimstone. 371
Messrs. BOWERS & SANDS—Mr. Reed for Schuyler L. Parsons *et al.* and a quantity of brimstone.
Messrs. STERN & RUSHMORE—Mr. Regensburger for John Munroe & Company and a quantity of brimstone.
Messrs. CONVERS & KIRLIN for the *Styria* and the Austro-Americana Steamship Company.

The allegations of the various libels, cross libels and answers are stated by counsel. 372

MR. KIRLIN offers in evidence the deposition of ANTONIO G. SCOPINICH, master of the *Styria*, and reads in evidence:

Letter from the master to the shippers of sulphur, dated April 27, 1898.

(Marked *Styria's* Exhibit 1.)

Protest of John Sofio & Company, dated May 2, 1898.

(Marked *Styria's* Exhibit A.)

373 Answer of the master thereto.

(Marked *Styria's* Exhibit B.)

Answer of the master, dated May 5, 1898.

(Marked *Styria's* Exhibit B.)

Bill of lading offered in evidence in connection with said deposition.

(Claimant's Exhibit 5, June 8, 1898.)

374 Stipulation entered into between the parties August 12, 1898, providing for the shipment of the sulphur, etc.

(Marked *Styria's* Exhibit C.)

Deposition of Henry de Thianich, master of steamship *Abbazxia*.

Deposition of Captain Scopinich, re called.

Deposition of Thianich, re called.

Stipulation entered into between the parties provid-
375 ing for the reading of certain documents which are annexed to the stipulation.

(Marked *Styria's* Exhibit D.)

Mr. Kirlin: Pursuant to the terms of that stipulation I offer in evidence the letter and telegrams annexed to the stipulation.

(Marked from 1 to 16 inclusive.)

Objected to.

The Court: They should come in on rebuttal
376 if at all.

Mr. Kirlin: Pursuant to the stipulation I read in evidence the decree of the Queen of Spain, dated April 23, 1898, in Spanish, from the "Gaceta," of Madrid, published April 24, 1898.

(Marked *Styria's* Exhibit E.)

Translation of the decree which appears in the London "Gazette" of May 3, 1898.

(Marked *Styria's* Exhibit E 1.)

Robert Hunter. 377

Counsel for *Styria* offers in evidence the proclamation of neutrality of the Queen of England, dated April 23, 1898, as published in the London "Gazette" of April 26, 1898.

Objected to. Excluded.

Counsel for *Styria* offers to read from advance sheets of the Consular reports, dated May 10, 1898, from the State Department, respecting the publication in the 378
London "Gazette" of the decree of the Queen of Spain.

Objected to. Excluded.

It is admitted that the Spanish proclamation of war was communicated to the different governments officially in due course, and that the Queen of England issued her proclamation in reference to the neutrality laws on the 23rd of April.

Counsel for *Styria* offers in evidence the pro- 379
tests served by each one of the shippers named in the libels and the answer to such protests by the master.

(Marked *Styria's* Exhibits F 1 to F .)

Trial notes, pp. 2[illegible]–36.

Counsel for *Styria* offers in evidence statement furnished by counsel for Malcomson showing amount realized by them in New York for their sulphur.

(Marked *Styria's* Exhibit G.) 380

Robert Hunter, being duly sworn and examined as a witness on behalf of the *Styria*, testifies:

By Mr. Kirlin:

Q. Are you a Clerk in the Custom House? A. Yes, sir.

Q. Have you produced pursuant to a subpœna *duces*

381 Robert Hunter.

tecum the entry of Malcomson for sulphur brought forward by the steamship *Abazzia?* A. I have, sir.

By the Court:

Q. Entry of what date? A. September 30, 1898.

Mr. Kirlin: It is liquidated October 25, 1898.

382 By Mr. Kirlin:

Q. Is the Consular invoice attached? A. Yes, sir; those two papers are attached.

Q. Two bills of lading? A. Two bills of lading.

Counsel for *Styria* offers the Consular invoice and bills of lading.

It is admitted that the Consular invoice produced is the Consular invoice for the sulphur that was shipped on the *Styria*.

383 By the Court:

Q. What is the total value of the goods billed to Malcomson, according to that entry? A. $27,246.

By Mr. Hill:

Q. That is on one bill of lading? A. Both bills of lading are attached to it.

By Mr. Kirlin:

Q. Does that include the sulphur under both bills of lading? A. Yes, sir.

384 Q. Have you also produced the entry of Munroe & Co? A. Yes, sir.

Q. Do you produce the entry now? A. Yes.

Q. Is the bill of lading annexed to the entry? A. Yes, there is one bill of lading and one invoice.

Q. What is the amount of the invoice in dollars? A. $2,329.

Q. Do you also produce the entry of James L. Morgan & Company? A. Yes.

Q. Bill of lading and invoice? A. Yes, sir.

Q. What is the invoice value of that lot in dollars? A. $4,279, or 22,174 lire.

Q. Does that take account of depreciation in lire? A. That seems to be the full value.

Q. Do you also produce the entry of Parsons & Pettit? A. Yes.

Q. How many bills of lading are there there? A. Two bills of lading and two invoices.

Q. What is the total invoice there shown in dollars? A. $6,925.

Deposition of ANTONIO G. SCOPINICH taken on behalf of claimant before James T. Kilbreth, Notary Public, New York, on the 8th day of June, 1898, pursuant to notice.

Present—Messrs. CONVERS & KIRLIN (by Mr. Kirlin) for Claimant.

Messrs. COWEN, WING, PUTNAM & BURLINGHAM (by Mr. Burlingham) for Libellant James L. Morgan *et al.*

Messrs. SULLIVAN & CROMWELL (by Mr. Hill) for Libellant Alfred S. Malcomson.

Messrs. BOWERS & SANDS (by Mr. L. G. Reed) for Libellant Schuyler L. Parsons.

Messers. STERN & RUSHMORE (by Mr. M. M. Regensburger) for Libellant John Munroe *et al.*

ANTONIO G. SCOPINICH, called on behalf of claimant, being duly sworn, in each of the above entitled causes, testifies as follows:

DIRECT EXAMINATION by Mr. Kirlin:

Q. Captain, are you the master of the *Styria*? A. Yes.

389 Q. She is an Austrian steamship? A. She is.

Q. By whom is she owned? A. She is owned by Schenker & Co., of Vienna, and also part owned by Burrell & Son, of Glasgow.

Q. Where is the vessel's home port? A. Trieste.

Q. How old a ship is she? A. She is going on in the sixteenth year; she was built in 1882.

Q. What is the tonnage of the ship? A. (Witness
390 looks in book) Gross tonnage, 3,153 65/100.

Q. Net tonnage? A. The net tonnage is 2,336.

Q. Is she an iron steamship? A. She is an iron steamer.

Q. How long? A. The length I don't know exactly. She is close to 300 feet.

Q. About what is her beam? A. About 38 or 40.

Q. And about what depth of hold? A. She is about 24—23 or 24.

Q. How many decks has she? A. Three-decked
391 ship.

Q. Compound engines? A. Compound engines.

Q. What is her speed? A. Her speed is according to how much coal you burn. She goes 9 and she goes 10½.

Q. You were master on this last voyage from Sicily? A. Yes, ever since we left Trieste.

Q. When did you leave Trieste? A. (Witness looks in book). We left Trieste on the 16th of April, I believe.

392 Q. Was all this brimstone which is in litigation taken at Girgenti? A. Port Empedocle, which is the port of the town of Girgenti.

Q. What time did you reach Port Empedocle? A. At Port Empbdocle we arrived early on the 21st of April.

Q. This present year? A. Yes.

Q. Had you any cargo up to that time? A. We had some cargo in Trieste, not in Girgenti. We started the same day loading.

393

Q. Your cargo from Trieste was to be discharged there, was it? A. No.

Q. I thought you said you started unloading? A. No. We shipped cargo to America in Trieste.

Q. What cargo was that? A. That was magnesite—general cargo—paint.

Q. Where was it stowed? A. Stowed partly down below and partly on deck.

Q. At Port Empedocle you arrived early on the 21st, you say? A. Yes. 394

Q. Who was your agent there? A. William Peirce & Co.

Q. At what time did you begin to take on brimstone at Port Empedocle? A. Early in the afternoon.

Q. Of the 21st? A. Yes.

Q. Did you load from a wharf or from lighters? A. From lighters. You could not get alongside a wharf there.

Q. Who were the shippers of the brimstone at Port Empedocle? A. The shippers were Baller & Co.; Emil Fog & Sons; Florio; John Sofio & Co., and F. Amato & Co. 395

Q. Can you state from recollection how many tons were shipped by each of these shippers? A. Well, I believe there were 250 shipped by Baller, one parcel; and then 100 tons again from Baller, one parcel.

Q. How much from Fog & Son? A. 500 tons.

Q. How much from Sofio? A. 250 tons.

Q. How much from Amato? A. 100 tons. 396

Q. How much from Florio? A. 1,000 tons. Making a total of 2,200 tons.

Q. When was that received—during what days? A. We started and loaded very fast, you understand. Of course, we received one day 300 tons, and another day 500, and up to 1,000, you understand. We had been loading as fast as we could get it.

Q. When was it finished? A. Finished on the 25th. On Sunday. That was the 25th, I believe.

Q. How much did you take on on that last day;

397 do you remember? A. A very few tons—very few; might have been 40 tons, or something like that.

Q. From a lighter also? A. From lighters, yes.

Q. Lying in the roadstead, I suppose? A. In the roadstead—in the harbor, I mean. There is no roadstead there. In the harbor. Because sometimes ships, when they load too much water, they finish in the roadstead; but we finished in the harbor. We had
398 fairly enough water to finish there.

Q. Who gave receipts for the cargo that was shipped? A. The mate should have given them.

Q. Have you seen those yourself? A. I have not seen them.

Q. Do you know on what day they were delivered—the different dates? A. They were delivered accordlng to the lighters that came in—in routine like.

Q. When did you sign the bills of lading? A. I signed them as the parcels were on board, and some of
399 them I signed after the ship was finished.

Claimant's counsel calls for the production of the original bills of lading, notice to produce having been given.

Mr. Burlingham produces bill of lading for 3,250 Sicilian cantars, consigned to Brown Brothers & Co., shipped by John Sofio & Co., dated April 23, 1898, signed by Antonio G. Scopinich,

400 Q. (Said bill of lading shown witness.) Is this your signature? A. Yes.

Said bill of lading marked Claimant's Exhibit 1 Morgan, June 8, 1898.

Mr. Regensburger produces bill of lading for 100 tons of brimstone, dated April 24, 1898, shipped by F. Amato & Co., and consigned to John Munroe & Co.

Said bill of lading, marked Claimant's Exhibit 2 Munroe, June 8, 1898. (Printed as ex-

hibit annexed to libel of John Munroe *et al.* ante p. .)

Mr. Reed produces bill of lading for 3,250 canters, shipped by Ferd. Baller & Co., addressed to order Hambro, said bill of lading being dated April 21, 1898.

Said bill of lading marked Claimant's Exhibit 3 Parsons, June 8, 1898. (Printed as exhibit annexed to libel of Schuyler & Parsons, ante 402 p. .)

Mr. Reed also produces bill of lading for 1,300 cantars, shipped by Ferd. Ballar & Co. to order, the bill of lading being dated April 21, 1898.

Said bill of lading marked Claimant's Exhibit 3a Parsons, June 8, 1898.

Q. Are these your signatures to Claimant's Exhibits 3 and 3a? (Said exhibits shown witness.) A. 403 Yes.

Mr. Hill produces bill of lading for 13,000 cantars of brimstone, shipped by I. & V. Florio, consigned to order of the Canadian Bank of Commerce, the bill of lading being dated April 24, 1898.

Said bill of lading marked Claimant's Exhibit 4 Malcomson, June 8, 1898. (Printed as exhibit annexed to libel of Alfred S. Malcomson, ante p. .) 404

Mr. Hill produces also bill of lading for 6,500 cantars of brimstone, shipped by Emil Fog & Sons to the Canadian Bank of Commerce, the bill of lading being dated April 22, 1898.

Said bill of lading marked Claimant's Exhibit 4a Malcomson, June 8, 1898. (Printed an exhibit annexed to libel of Alfred S. Malcomson, ante p. .)

Claimant's counsel offers all said bills of lading in evidence.

Q. Were all these bills of lading that you signed at Girgenti all on the same printed form? A. Yes, the same thing.

Q. (Paper shown witness.) Is this the form? A. Yes. The company bill of lading, you see.

Said form of bill of lading marked Claimant's Exhibit 5 for identification, June, 8, 1898.

406 Q. Did you also receive from the shipper's bills of lading for each of these lots signed by them? A. Yes.

Q. Where are those bills of lading? A. At the lawyer's at Girgenti—because I handed all documents to him in case they were required, according to his advice.

Q. What is the lawyer's name? A. Antonio Pancamo.

Q. You exchanged bills of lading with the ship-
407 pers? Is that it? A. No. I wouldn't exchange them.

Q. You gave them one signed by you, and they gave you one signed by them? A. Oh, yes, of course.

Q. They were identical otherwise? A. Yes. I gave several copies, you know.

Q. You gave full sets? A. Yes.

Q. And they gave you one only? A. One. That is to say, of course they signed underneath to accept
408 the conditions of the bill of lading.

Q. Look on Claimant's Exhibit 1 and point out at what place they signed? (Said Exhibit 1 shown witness.) A. At the bottom—as far as my memory——

MR. BURLINGHAM: We don't want you to tell what was in them.

Q. They just signed it at the bottom? A. Yes.

Q. Were they in the same form as this? A. The same form.

Q. Did you clear the Custom House at Port Empedocle with this brimstone? A. Yes. 409

Q. On what day? A. I don't remember if it was on Saturday or Sunday, but I believe it was on Saturday night.

By Mr. Burlingham:

Q. The 24th, you mean? A. Yes.

By Mr. Kirlin: 410

Q. Up to the time that you had the last of this brimstone on board, had you received any instructions concerning the voyage from your owner?

Mr. Burlingham: Objected to.

A. When?

Q. Up to the time you had this all on board?

Objected to. Question withdrawn.

Q. Did you sail from Girgenti with the brimstone? 411
A. No.

Q. What did you do with it? A. We put it on shore in the warehouse, by means of lighters.

Q. What was the reason for putting it ashore?

Mr. Hill: Objected to.

A. I acted according to instructions.

Q. Why didn't you bring it on to New York?

Mr. Hill: Objected to. 412

A. In fact, I didn't bring it, because I could see through the newspapers that it was contraband of war, although I acted on the owner's instructions to land the goods; for I would never have sailed with such a cargo, because I might be caught here by the enemy —your enemies, I mean.

Q. You mean by Spain? A. Yes, of course. Those are your enemies now, I suppose.

Q. Did your course towards New York take you

anywhere near Spain? A. By all means. You have got to go near Spain, within a few miles, to sight the light-houses.

Q. Before landing the cargo did you communicate at all with the shippers or consignees? A. On or about the same time, the same day on landing the cargo.

Q. Look at Claimant's Exhibit 1, Morgan, and say with whom you communicated in regard to the shipment covered by that bill of lading? (Said Exhibit 1 shown witness). A. With John Sofio & Co.—gave them notice; also to Messrs. Brown Brothers & Co., New York.

Claimant's counsel calls on counsel for Morgan to produce the notice sent to Sofio and to Brown Brothers & Co.

Mr. Burlingham: Before we go any further I should like to know what the defense is in the case.

Mr. Kirlin: The defense will be that the transportation of the cargo had become unlawful, and that the master was excused from bringing it forward by reason of the exemption of restraints of princes and rulers, and also had the right to land the cargo under the clause in the bill of lading, which says: "In case of "Blockade or interdict of the Port of Dis- "charge, or if, without such Blockade or in- "terdict, the Master shall consider it unsafe "for any reason to enter or discharge cargo "there, he is to have option of landing the "Goods at any other port which he may con- "sider safe, at Shipper's risk and expense, "and on the Goods being placed in charge of "any Mercantile Agent, or of British Consul, "and a letter being put into the Post office, "addressed to the Shipper and consignee, if "named, stating the landing and with whom "deposited, the Goods to be at the Shipper's

" risk and expense, and the Master and Owners
" discharged from all responsibility."

MR. BURLINGHAM: Those are all the defences, are they?

MR. KIRLIN: As at present advised; but I do not waive the right to any others that I may have.

Mr. Burlingham produces the notice to Sofio & Co., and states that he doesn't know anything about the notice to Brown Brothers & Co.—that he has not the notice given to them. 418

Q. (Said notice to Sofio & Co. shown witness). Is that the notice? A. That is my letter.

Said notice is offered in evidence and marked Claimant's Exhibit 6, Morgan, June 8, 1898.

Q. What communication, if any, did you have with the shippers or consignees under the bills of lading, Claimant's Exhibits 4 and 4a? A. To the Canadian Bank of Commerce, in New York, a letter, and also to I. & V. Florio, Palermo. 419

Q On what date did you send letters to them? A. The letters to these people—the same time.

Q. The 27th? A. The same time, the 27th—just as well as the others.

Claimant's counsel calls for the production of said letters. 420

MR. HILL: I don't know anything about letters to Messrs. Florio, but there is a letter to Spettabile, Canadian Bank of Commerce. (Counsel producing a letter).

Q. (Said letter shown witness). Is that your letter to the Canadian Bank of Commerce? A. Yes.

Said paper is offered in evidence, and marked Claimant's Exhibit 7, Malcomson, June 8, 1898.

Q. What was the substance of your letter to Florio?

421 Antonio G. Scopinich.

A. The same as these –similar to these. (Witness indicating said notices.) In fact, I wrote one, and then I copied the others.

Q. It was the same letter as this, only addressed to Florio? (Claimant's Exhibit 6 shown witness.) A. Yes.

Q. To whom did you send notices touching the cargo covered by Claimant's Exhibit 3? A. To Ferd. Baller,
422 Messina, and Hambro, New York.

Claimant's counsel calls for the production of said notices.

Mr. Reed: I have nothing from Hambro. I produce one sent to Baller. (Counsel producing a paper.)

Said notice offered in evidence, and marked Claimant's Exhibit 8, Baller, June 8, 1898.

Q. To whom did you send notices touching the
423 cargo covered by Claimant's Exhibit 2, Munroe? A. To Messrs. Munzoe & Co., New York. It was written "Munzoe A Co." in the bill of lading signed by the shippers, and I sent a letter accordingly.

Q. How did you address it? A. John Munzoe & Co., New York.

Q. And did you also communicate with the shippers? A. Yes.

Q. F. Amato & Co.? A. Yes, F. Amato & Co., Palermo.

424 Q. What was the form of that? A. The very same as the others.

Counsel Claimant's calls for the production of the notices touching the cargo covered by Claimant's Exhibit 2 Munroe?

(Mr. Regensburger having left the room, Mr. Hill stated that he had no authority from him to reply to the call.)

Q. Have you made a copy of the notices which have

425

been produced, and regarding which you have testified? A. Yes.

Q. Were they all in the same form? A. In the same form, yes.

Q. (Paper shown witness.) Is this a translation of the notices? A. Yes. That is as near as I can make it, being a foreigner.

Claimant's counsel offers said translation in evidence.

426

Marked Claimant's Exhibit 9, June 8, 1898.

Said Claimant's Exhibit 9 is as follows (said exhibit being headed "Copy of registered letter sent to shippers on breaking bulk"):

"Port Empedocle, 27th of April, 1898.

"On finding risky my passage to New York, "with the actual sulphur cargo, for facts of war, "I give you notice that I am discharging your "cargo for your own account and risk, under 427 "care of the mercantile agent, Mr. William "Peirce, depositing the same in the warehouses "of Mr. Zenobia Urso, and if these are not sufficient, in the warehouses of the British Consulate, faculty which I have in force in the "bills of lading.

"With my kindest regards, etc.,

"(Signed) Antonio G. Scopinich,

"Master Australian Steamer *Styria*."

428

(Copy of registered letter sent to consignees.)

"Port Empedocle, 27th of April, 1898.

"On finding risky my passage to New York, "with the actual sulphur cago, for facts of war, "I give you notice that I discharge the said "cargo under the care of the mercantile agent, "Mr. William Peirce, depositing the same in "the warehouses of Mr. Zenobia Urso here, and "if these are not sufficient, in the warehouses of

429 "the British Consulate, faculty which I have "in force in the bills of lading.

"With my kindest regards, etc.,

"(Signed) ANTONIO G. SCOPINICH,

"Master Austrian Steamer *Styria*."

Q. Did you also give notice to the Austrian Consul?

MR. BURLINGHAM: Objected to.

430 A. Yes.

Q. On the same day? A. Yes.

Q. (Paper shown witness.) Is that a copy of the notice to the Austrian Consul?

Objected to.

A. Yes.

Said copy of notice is offered in evidence, and marked Claimant's Exhibit 10, June 8, 1898.

431 Said Claimant's Exhibit 10 is as follows (being headed "Copy of letter sent to the Austrian Consul on the 27th of April, 1898"):

"Please take notice that by order of the repre-"sentative of my owners, for facts of war, I am "discharging the Austrian Steamer *Styria*, "commanded by me, at expense and risk of "whom it might concern, under care of the "mercantile agent, Mr. William Peirce, depos-"iting the sulphur shipped here, in the ware-

432 "houses of Mr. Zenobia Urso, and if these ware-"houses are not sufficient, in the warehouses of "the British Consulate.

"With my kindest regards, &c.,

"(Signed) Antonio G. Scopinich,

"Master Austrian Steamer *Styria*."

Q. Did you deliver this Claimant's Exhibit 10?

Objected to.

A. Yes.

433

Q. Did you also deliver a notice to the director general of customs?

Objected to as immaterial, irrelevant and incompetent.

A. Yes.

Q. This was to save duties on reshipment? A. Yes.

Q. Where was this delivered?

434

Objected to.

A. This was given through the Austrian Consul in Port Empedocle to the Customs—to the head official there of the Customs.

Said notice is offered in evidence, and marked Claimant's Exhibit 11, June 8, 1898.

Said Claimant's Exhibit 11 is as follows (said exhibit being headed "Copy of letter to the Honorable Director General of the Gabelle." (Customs):

435

"Having here loaded per the Austrian Steamer *Styria*, bound to New York, for account of the undersigned gentlemen:

"Messrs. Ignazio & Vincenzio
"Floria of Palermo, 1,000 tons sulphur
"Messrs. Ferd. Baller & Co., of Messina, 350 " "
"Messrs. John Sofio & Sons " 250 " "
"Messrs. Emil Fogg & Co., " 500 " "
"Messrs. F. Amato & Co., Palermo, 100 " " 436
"and sulphur being declared contraband of war, war
"actually existing between Spain and the United
"States of America, in behalf of the present laws, I
"deem it in the interest of all whom it might concern,
"to discharge the whole sulphur here on receiving the
"necessary permit from the Customs.

"As the duty of the master of a ship actually in com-
"mand of the above steamer, I humbly ask this Hon-
"orable Director to remit the duties for the above said
"quantities of sulphur on the set of reshipment, as

437 Antonio G. Scopinich.

"soon as peace shall be re-established between the two "beligerent nations, on the grounds that the duty, "according to the actual laws, was already paid the "first time."

Q. On what day did you begin to unload the brimstone? A. I began to unload the brimstone on the 27th of April.

Q. What did you do with it? A. We landed it into
438 lighters, and from lighters we conveyed it to shore in the warehouses of Zenobio Urso.

Q. Who selected this warehouse, and where was it? A. My agent.

Q. William Peirce & Co? A. Yes.

Q. Where is the warehouse? A. The warehouse is there in the landing on the beach in Port Empedocle.

Q. Is this one of the usual storage places in Port Empedocle? Yes.

Q. Did you make any rate by agreement in regard
439 to the charges? A. The usual rate that is customary there in the port.

Q. When did you complete the discharge? A. On the 7th of May.

Q. On the completion of the discharge did you communicate any further with the shippers? A. Yes. I sent them a letter—to both shippers and receivers—consignees I mean.

Q. Under each bill of lading? A. Under each bill of lading, to all shippers named in the bill of lading,
440 and to all the consignees named in the bill of lading.

Claimant's counsel calls for the production of said letters.

Mr. Burlingham produces a postal card, addressed to John Sofio & Co., dated May 7th, and signed by the captain.

Said postal card is offered in evidence, and marked Claimant's Exhibit 12, June 8, 1898.

Mr. Hill states that he has none.

Mr. Reed produces a postal card.

Said postal card is offered in evidence and marked Claimant's Exhibit 13, June 8, 1898.

Q. Were these postal cards all in the same form? A. The same form.

Q. Have you a translation of them? A. Yes.

Q. (Paper shown witness.) Is this it, and made by you? A. Yes.

Q. Is it correct? A. Yes.

442

Said translation is offered in evidence, and marked Claimant's Exhibit 14, June 8, 1898.

Said Claimant's Exhibit 14 is as follows (being headed "Copy of the registered postal cards sent to the shipper of sulphur"):

"EMPEDOCLE, 7th May, 1898.

"Referring to my letter of the 27th last., by
"which I gave you notice that the parcel of
"sulphur loaded by you on board the Austrian
"steamer *Styria* for New York, is laid at the 443
"risk and expense, in the warehouses of Mr.
"Zenobio URSO here, and as soon as you will
"pay the expense here made for your account,
"in conformity with the bills of lading,
"the said sulphur will be delivered to you."

Q. That is the form of the letter to the shippers? A. Yes.

Q. Have you a translation of the cards you sent to the consignees? A. Yes. 444

Q. (Paper shown witness.) Is this it? A. Yes.

Said paper offered in evidence, and marked Claimant's Exhibit 15, June 8, 1898.

Said Claimant's Exhibit 15 is as follows (being headed "Copy postal card sent to the receivers at New York—those that were named in the bills of lading"):

"7th May, 1898.

"Referring to mine of the 27th last, I give
"you notice that the parcels of sulphur loaded

445 "on the Austrian steamer *Styria* now lying in
"the warehouses of Messrs. Zenobio Urso here,
"at the risk and expense of whom it might
"concern.

"With my kindest regards, &c.,

"(Signed) ANTONIO G. SCOPINICH,
"Master Austrian Steamer *Styria*."

Q. Did you receive any communications on the sub
446 ject of the cargo from the shippers in Girgenti—with regard to landing the cargo? A. Yes. I received protests a couple of days after starting the discharge—two or three days after we commenced unloading, and on one occasion I received a telegraphic protest.

Q. From whom was that? A. From Emil Fogg & Sons, I believe.

Q. Have you those protests with you? A. I have the telegram on board.

Q. Have you the protests? A. No, I have not got
447 them. I handed them to the lawyer at Girgenti.

Q. Whose name you gave before? A. Yes.

Q. Did you reply to the protests? A. The lawyer did—in my name or in his name.

Q. The upshot of it was that you left all the sulphur at Port Empedocle? A. Yes.

Q. When did you leave Port Empedocle? A. I left Port Empedocle on the 8th of May, in the morning early.

Q. When did you arrive in New York? A. I went
448 to Messina on the 8th and sailed the same day. I shipped a few boxes of fruit and sailed to Palermo. On the 9th I was in Palermo, on the 17th in Algiers, on the 24th at St. Michael's, and I believe it was on the 3rd of June in the morning that I was here.

Q. What information did you act on in concluding; as you say you did, that this brimstone was contraband of war.

MR. BURLINGHAM: He has not said it was contraband of war.

449

MR. HILL: Objected to as immaterial, irrelevant and incompetent.

A. It was fully discussed in the papers over there.

Q. What papers?

Objected to.

A. Italian papers, the Sicilian papers, from Palermo.

MR. HILL: I move to strike out the answer.

450

Q. What was it that you saw?

Objected to.

A. (Witness continuing) And when we left it was not officially confirmed that sulphur was not contraband of war.

Q. That it was not? A. It was not officially confirmed that it was not contraband of war when we left.

451

MR. BURLINGHAM: I move to strike out the answer as irresponsive.

(Same motion made by counsel for the other libellants.)

Q. What were the discussions that preceded that?

Objected to as hearsay.

A. The discussion was that between Rome and Madrid they were trying to make arrangements so as to get sulphur declared free of contraband of war. I don't know how I can explain it better.

452

Q. And that was not agreed to, as far as newspapers reported, up to the time you left?

Objected to by counsel for all the libellants.

A. No, not officially. It was an understanding that the ships were to be let go free, you understand, but it was not officially confirmed.

Q. Do you know whether it was actually contraband or not?

Objected to.

A. I know that it is for to make gunpowder. Everybody knows that.

Q. Do you know whether the Spanish government considers or holds it to be contraband?

Objected to.

A. Of course it did hold it, because they were making understandings between Rome and Madrid about excluding sulphur from being contraband of war.

Q. You do not actually know what the outcome of that was yourself? A. No, I don't know. I read the papers. I could not be certain of it. But I was always under the impression that sulphur is to make gunpowder; it is wanted for that.

Mr. Burlingham: You must not tell us what your impressions were, captain.

Q. Are you bound on a voyage to sea from here? A. Yes.

Cross-Examination by Mr. Burlingham:

Q. The only reason why you put this sulphur out at Port Empedocle was that you had some fear of difficulties between Spain and the United States? A. The reasons that I put the cargo on shore—it was because it was to carry my instructions out.

Q. And who gave you those instructions? A. The managing owners.

Q. And who were they? Burrell? A. Burrell & Son.

Q. Then they knew what you were doing, did they? A. They knew that I was to carry out instructions.

Q. The fact that you intended to, and did, put this cargo of brimstone out of the ship was known to Bur-

457

rell & Son, was it? A. That I was landing the same?

Q. Yes. A. Of course it was.

Q. And you did it by their instructions? A. Of course.

Q. And the reasons you have given other than that reason are mere impressions of yours, are they? A. No. Only to carry out instructions, that is all. I did not act on my own judgment.

Q. Not at all? A. No.

458

Q. Then these statements that you have made to us about contraband of war, and negotiations between Spain and Italy, and war between the United States and Spain, are merely given us for information as to your feelings at the time, are they? A. Merely to carry out—not merely—to carry out the conditions of the bill of lading.

Q. What does that mean? A. That means that when the master thinks it unsafe to proceed, and so on. You may read it.

459

Q. Suppose you show it to me? (Bill of Lading shown witness.) A (Witness indicating). "In case of blockade." (Witness pointing out to this clause in the bill of lading.)

Q. (Counsel reading.) "In case of blockade or in-
"terdict of the Port of Discharge, or if, without such
"Blockade or interdict, the Master shall consider it un-
"safe for any reason, to enter or discharge cargo there,
"he is to have option of landing the Goods at any
"other port which he may consider safe, at Shipper's 460
"risk and expense, and on the Goods being placed in
"charge of any Mercantile Agent, or of British Con-
"sul, and a letter being put into the Post Office, ad-
"dressed to the Shipper and Consignee, if named, stat-
"ing the landing and with whom deposited, the
"Goods to be at the Shipper's risk and expense,
"and the Master and Owners discharged from all re-
"sponsibility." A. Yes.

Q. You think that under that clause of the bill of lading you had a right to put this sulphur out of the

ship at Port Empedocle, do you? A. When the war broke out.

Q. Your port of discharge was New York, was it? A. Yes.

Q. Did you think that New York was blockaded? A. Well, I wouldn't be sure about that, but I knew there was a war between Spain and this country.

Q. Did you ever hear of any blockade of New York?

462 A. No, I didn't hear about blockade, but I heard about the war, and I heard a blockade is going on, too—so it was talked, you understand; I don't know.

Q. Were there any other ships in this port that were loading sulphur? A. Not at the same time.

A. About the same time? Q. Not at the same time. Before, yes.

Q. Did you know whether the *City of Truro* sailed about that time? A. No. I have not seen the *City of Truro.*

463 Q. You know she did sail from the same port, don't you, with a cargo of brimstone? A. I was not aware of that.

Q. How about the steamship *Marty.* A. I don't know.

Q. How about the *Lord Warwick?* A. The *Lord Warwick* was alongside of us.

Q. Was alongside of you? A. Yes.

Q. And she was loading brimstone, was she? A. Yes—and she sailed before we did.

464 Q. When did she sail? A. I couldn't tell you.

Q. It was after war was declared? A. I couldn't tell you.

Q. Don't you remember that it was? A. I couldn't tell you.

Q. What time was war declared, if you know or remember? A. I couldn't tell you the dates.

Q. Was it on April 23rd? Don't you remember? A. I don't remember.

Q. How long had you been in Girgenti or Port Em-

pedocle when the *Lord Warwick* sailed—about how many days? A. I suppose three or four days.

Q A week? A. No; four or five days—something like that.

Q. She sailed to New York, didn't she? A. I couldn't tell you where she sailed.

Q. She sailed to America, didn't she? A. I couldn't tell you that. She sailed; but where I don't know. 466

Q. Do you say that Sofio & Co. protested against your landing this cargo? A. Yes.

Q. And in spite of their protest you landed it? A. Yes.

Q. Under this clause in the bill of lading? A. Yes.

Q. Under the power which you thought was given you in this? A. Yes.

Q. And by directions of your owners? A. Yes.

Q. Now, you say that you heard that sulphur—brimstone—was excluded from the list of contraband 467 articles? A. Not excluded exactly; but I heard negotiations were going on between Rome and Madrid about it to exclude it.

Q. When did you hear that? A. While we were finishing discharging.

Q. Don't you know that a proclamation was made by the Prefect of Messina about it? A. No.

Q. Don't you know that it was publicly announced in Sicily that an arrangement had been made between Spain and Italy whereby it was permitted to carry 468 brimstone? A. I have not heard that. I only——

Q. While you were there you got all the information you possibly could, didn't you, on the subject? A. Well, I heard people talking, you understand; but to what certainty they were talking I couldn't tell you.

Q. You seemed to have sent a notice to the Austrian Consul. Did you try to find out through him what these negotiations were between the Italian and Spanish governments? A. No.

469 Q. Did you make any effort to find out whether you could carry this sulphur or not? A. No.

Q. Did you get no information, nor try to get any information, about whether it was possible for you to carry it? A. No. Because I was reading the papers of what was constantly going on, you understand, and of course I didn't take any pains—I mean I didn't ask if sulphur was declared contraband of war, you un-

470 derstand.

Q. You said a little while ago, I believe, on your direct examination, that you thought that it was contraband of war? A. I thought it was contraband of war.

Q. Why? A. Because I had seen what the papers reported about sulphur.

Q. Do you mean to say that you did not inquire whether sulphur was contraband of war at all? A. If I did not inquire?

471 Q. Yes. A. But there was a talk in the town that sulphur was contraband of war.

Q. Did you make any inquiries of any people in authority as to whether sulphur was contraband or not? A. Not officially.

Q. You mean you heard gossip on the Exchange and in brokers' offices about it? A. Yes.

Q. And, for your part, as you knew that brimstone was used to make powder, you thought it must be contraband. Is that it? A. Of course.

472 Q. And that is about all there is to it? A. Yes.

Q. It was your own notion, that is all? A. Also I had seen it in the papers.

Q. Do you believe everything you read in the papers, captain? A. I don't know if I should believe; but I know the papers were talking frequently about this brimstone being or not being declared contraband of war, you understand.

Q. And there was a great desire on the part of the Italian government—— A. (interrupting) To have it free.

Q. That it should be free? Yes.

Q. And that it should not be regarded by Spain as contraband? A. Yes—and that put me in the path that sulphur is contraband of war.

Q. That suggested it to you, you mean? A. Yes.

Q. That it must be contraband? A. Of course—as Italy was continually exchanging words with Madrid about this sulphur to let it go free.

Q. Now, as matter of fact, captain, don't you know 474
that on the 5th of May, before you sailed, the Italian government had received a message ftom the Spanish government, which was made public throughout the whole of Italy, that sulphur would not be regarded as contraband of war by the Spanish government? A. I have not seen that.

Q. Was there not one of the 2nd? A. I don't know.

Q. Did you try to find out whether——A. (interrupting) I was so busy going to Girgenti, going to the law- 475
yers, and so busy corresponding with the owners, I didn't have time to think of it.

Q. The fact was that after your owners told you to do it you gave yourself no more thought about it? Is that it? A. I was to carry out their instructions.

Q. After you had put the sulphur out you took in some other cargo, I suppose? A. Not in Girgenti.

Q. In any other place? A. Yes. Palermo and Messina.

Q. Did you get any instructions from Burrell & Sons 476
to go forward to New York. A. Yes, to load fruit.

Q. You got a better freight by taking this green fruit, didn't you? A. I don't know.

Q. You know what the freight was? A. The freight on fruit ranges about the same all the year round.

Q. Isn't it a fact that the freight——A. (continuing) In fact; last year it paid more than this year.

Q. What was your freight on this fruit? A. Eight or ten pence per box.

Q. Ten? A. Eight or ten.

Q. How much was the gross freight from Italy to New York? A. About £1,600.

Q. And what would have been the gross freight on the sulpur? A. Oh, sulphur alone we could never take.

Q. Your cargo with the sulphur in was about £1,400 Sterling? A. I did not reckon it up.

Q. Reckon it up now? A. I couldn't tell you. I
478 couldn't reckon it, because I never know what is coming on board ship.

Q. (Paper shown witness.) Look at the paper I show you and see whether that estimate is anywhere near correct. A. It is not for me to say, because sometimes we leave holds empty, you understand.

Q. But you had so much sulphur, hadn't you? A. Yes.

Q. You had about 2,200 tons of brimstone on board? A. Yes.

479 Q. And the freight was six shillings per ton? A. Yes. But there was any amount of space, you understand, for fruit.

Q. And if you had filled it up with boxes of fruit—— A. (Interrupting) I think the freight would be nearly about the same. Because sulphur would not occupy much space; in fact, it would stiffen the vessel, you understand. I left cargo behind, the vessel not being stiff enough; so I could never have earned the freight that they would have made by having the brimstone
480 in. I believe the freight would be about the same, according to my practical experience.

Q. Then you did not lose a cent by this putting the brimstone out? A. And getting the other freight?

Q. Yes. A. I don't think so.

Q. You made money by it? A. I don't think we made or lost by the thing.

Q. How many boxes of fruit did you bring? A About 40,000.

Q. 40,000? A. Boxes and half boxes.

Q. How much could you have brought if you had

carried the sulphur? A. If we had carried the sulphur?

Q. About 22,000? A. Oh, more than that

Q. How much? A. I think she would have taken about 30,000 at least. Because there was any amount of space left, because we could not load here full up on account of the ship being cranky, you see.

Q. What ballast did you have? A. I was obliged to stop loading and take in ballast—stone ballast and 482
sand ballast—and cause the owners expense.

By Mr. Reed:

Q. Isn't that because you have to have a certain amount of ballast for fruit? A. No.

Q. Usually you have to have? A. I usually have enough—plenty—of ballast. We put it in the place where we could not put freight, and that caused the owners extra expense.

Q. Did you bring suits over in Italy against these 483
shippers of cargo for the expenses of putting the cargo out? A. Suits?

Q. Lawsuits? A. I don't know what was going on since I left. But when I left I only told them that the cargo was to be landed at their own risk and expense.

Q. You did not authorize a lawyer to bring an action against John Sofio & Co. for those expenses, did you? A. Yes, I left him the power of attorney.

Q. Directing him or empowering him to bring a suit? A. To answer all the questions, and in the case 484
of suit to represent me in every case; if necessary, to bring suits against the people.

Q. What claim did you make against Sofio & Co? A. The claim for expenses of landing the goods and storing them.

Q. Under this blockade clause in the bill of lading? A. Yes.

Q. That is the only basis for it? A. Yes.

Q. Was the brimstone weighed over there? A. Yes, under the supervision of a customs officer—of the Custom House officials.

485 Q. And are these cantars measures of weight? A. Yes.

Q. How many cantars were there in Sofio's shipment? A. I couldn't tell you, because I don't know the weights.

Q. Isn't it correctly stated in the bill of lading? A. I don't know, because I never supervise the weighing, and always sign weight unknown, as you see in the bill
486 of lading.

Q. Was it in good order? A. It might have been in good order.

Q. You gave a clean receipt for it? A. Oh, yes, and a clean bill of lading too.

By Mr. Hill:

Q. When do you say you arrived at Port Empedoc'e? A. On the 21st.

Q. You say you don't know anything about the *City*
487 *of Truro?* A. No.

Q. Wasn't she there when you arrived? A. No.

Q. Didn't she sail on the 24th? A. No. I have not seen her, as far as my memory is concerned. The *Lord Warwick*, yes; but the *City of Truro*, no.

Q. And how about the brimstone in these bills of lading exhibit 4, Malcomson and exhibit 4a Malcomson? That was weighed by the Custom House, or weighed under their supervision? A. On ship and on land; both ways.

488 Q. Was the full amount mentioned in those bills of lading landed? We had a certificate from the customs to state what was landed.

Q. And did you land the full amount stated in those bills of lading? A. Everything. There was not a pound left on board the ship.

Q. And it was the full amount mentioned in the bills of lading? A. I could not tell you whether it was agreeable with the bill of lading quantity. I hadn't time enough to check that.

Q. Was that brimstone in good order when you landed it? A. I hope so.

Q. You have an opinion about it, haven't you? You saw it, didn't you? A. I am not a brimstone merchant, and I don't understand whether brimstone is in good order or bad order. You want a few years experience to understand that. That was the first time, you see, that I have loaded it.

MR. KIRLIN: On the call of the counsel for Morgan, the log is produced and marked for identification.

Log is marked Morgan Exhibit A for ident., June 8, 1898.

By Mr. Kirlin:

Q. What language is it in? A. Italian.

By Mr. Burlingham:

Q. It is kept by the chief officer, is it not? A. By the second officer.

Q. Is the second officer on board? A. Yes.

Q. And the chief officer? A. Yes.

Q. And they were both on board at the time in Girgenti? A. Yes.

By Mr. Hill:

Q. Now, captain, you say that you put this brimstone ashore on instructions of the managing owners? A. Yes, and also because I knew that the war was there, and I acted on the bill of lading clause.

Q. You have testified, haven't you, that all this you did by orders? A. No. The principal reason was because I was ordered; and, secondly, that I had the bill of lading clause that fully authorized me when I deem it not safe to proceed with the cargo that was declared contraband of war.

Q. Do you want to change your testimony in that respect? A. No, I do not.

Q. Because you testified before that you were obeying orders. A. I said I acted on the owners' instructions, and also on the bill of lading clause.

Q. Won't you tell us what reason you had, other

than the fact that there was a war, to consider it unsafe to enter, or attempt to enter, the port of New York? What other reason did you have besides? A. The reason that I had was that I was passing close to Spain, and a man-of-war might stop me on my way.

Q. You didn't know anything about it except there was war? A. Yes.

Q. That is all? A. And then there was also in the
494 newspapers, the Italian newspapers, that a man-of-war was there looking for ships.

By Mr. Kirlin:

Q. Where? A. Off the coast of Spain. In the Italian newspapers.

By Mr. Hill:

Q. Did you inquire about that? A. I did not inquire, because I seen it in the newspapers, and I believed it more than any of the other inquiries.

495 Q. You did not inquire of any officials? A. No.

Q. How did you get these instructions from your owners? A. Because no official would give you any information, while he will give you it in writing, and he would rather not give it. That is why.

Q. I didn't ask you that, but never mind. How did you get these instructions from the owners? A. Telegraphic instructions; also, to my agent in Sicily.

Q. Had you asked for instructions? A. No.

Q. Didn't you suggest to them that they had better
496 instruct you? A. I beg your pardon.

Q. Didn't you suggest to them that they should tell you to do it? A. I didn't suggest to them. We are not supposed to know about that. They always handle the ship, you know.

Q. You heard negotiations were going on, you say, to exclude sulphur from the list of articles that were contraband of war. A. And that proved, of course, that sulphur is contraband of war.

Mr. Hill: I move to strike that out.

Q. And you heard it rumored that the endeavors in that way had been successful, and that it was not to be declared contraband? A. Endeavors in what?

Q. To have it excluded from the list of contraband articles? A. There was a rumor that they would exclude sulphur.

Q. There was that rumor? A. Yes, there was a rumor.

Q. When did you hear that rumor? A. When I 498
had about finished the job.

Q. Did you take any pains to verify that? A. Well, I looked at the papers.

Q. I know, but did you make any other inquiry? A. I spoke with the Austrian Consul several times.

Q. Upon that subject. A. On this subject. But I could never find out anything.'

Q. Did you inquire of him whether the Spanish Government had agreed that sulphur should not be contraband—did you ask him that? A. Yes, about 499
the end.

Q. You asked him that? A. Yes.

Q. And what did he tell you? A. He had no official communications.

Q. But the papers published that it was not to be contraband? A. The papers published that negotiations were going on.

Q. The papers published before you got away from there that they had succeeded, didn't they? A. Not that they had succeeded; that sulphur will be let 500
go free, you understand, but not officially confirmed.

Q. No; but the papers published that? A. Yes.

Q You had the same knowledge of that that you had of warships being waiting for you and things of that sort; you had the same information on both sides of the question, hadn't you? A. Yes

Q. You had just as much reason to believe that sulphur was not to be contraband as you had to believe that there were warships waiting to seize you? A. I

501 Antonio G. Scopinich.

had seen in the papers that a Spanish man-of-war caught a ship loaded with brimstone.

Q. You had the same sources of information on both subjects? A. Yes.

Q. The newspapers both times? A. Not at the same time.

Q. Not the same time; both times; and you made no attempt to verify any of them, except this inqniry
502 of the Consul? A. Yes.

Q. If you had not been instructed by the owners, would you not have waited to verify that before you discharged? A. Before I was instructed by the owners to sail with the sulphur I would have done so.

Q. And if they had not instructed you at all you would have waited to find out, wouldn't you, before you would have discharged the cargo? A. I don't know if I would; I couldn't tell you now what I would
503 have thought over there.

Q. You could not tell what you would have done? A. No. It greatly depends how a man finds himself. Probably he would do a thing to-day and to-morrow he would not do it.

Q. And you cannot carry yourself back so as to say what you would have done if you had not had instructions? A. No; I can't tell you now what I would have done then.

Q. In discharging into the warehouse did you ar-
504 range that different consignments should be kept separately? A. Of course. And it was separated, because I have seen it myself.

Q. You have seen it yourself? A. Yes.

Q. In whose charge did you leave this? A. Zenobio Urso; and there was put a lien on the goods for expenses.

Q. You put a lien on the goods for expenses. A. Yes; and the lawyers and the Sheriff, they examined all the lots. They were there.

Q. How much was the lien on these goods that you

received from Emil Fogg & Sons and from Florio? A. I couldn't tell you.

Q. You don't know that? A. No; I don't remember.

Q. Did you receive protests from Fogg and Florio? A. Yes, two or three days after I commenced discharging.

Q. A protest against your discharging? A. Yes; I had three or four protests; I don't know the names 506 now.

Q. They all protested, didn't they? A. I don't remember whether they all protested.

Q. Can't you recall whether Emil Fogg protested? A. Yes.

Q. And can't you recall whether Florio protested? A. Yes.

Q. After you got your orders from your owners you simply discharged, and bothered yourself no further about it—just carried out your orders? A. I dis- 507 charged everything, of course, as fast as I could, and took all necessary precautions so that none of the sulphur got spilled, so as to deliver the quantity shipped.

Q. You didn't bother yourself any further about the question of whether you should discharge or sail, when you got your orders; you followed your orders out? A. What do you mean?

Q. You did not bother yourself? A. To find out what? 508

Q. You did not bother yourself to consider the question any further whether you should sail or not, after you got your orders? A. No. Because you are dependent on orders.

Q. When you got your orders you acted on the orders? A. Yes. I was dependent upon orders. On starting discharging, it was my place to sail as quick as possible—according to instructions.

Q. Sulphur, you say, is not a very profitable cargo to carry?

Mr. Kirlin: He did not say that.

A. That I don't know. I didn't say that.

Q. You said you couldn't possibly make the thing pay if you carried only sulphur? A. Sulphur, no, because we were engaged to carry also fruit. We would also always fill the ship with goods.

Q. You said it wouldn't pay to carry sulphur alone? A. It wouldn't pay to go to America with sulphur alone.

510 Q. So sulphur is not a very profitable cargo by itself? A. I don't know that. Of course, I look at it this way: That ship carries 4,000 tons; and if we only sailed with 2,000 tons, of course, it wouldn't pay the owners —the coal neither, the burning.

Q. This was pretty low freight for sulphur? A. It is the customary freight.

Q. Hasn't the freight usually been higher than that? A. I don't know.

Q. Hasn't the freight since that time doubled? A.

511 I don't know. I am not aware of that. I know freight on fruit didn't go above the usual rate.

Q And you don't know what the freight on sulphur was? A. No.

Q. I am requested by Mr. Regensburger to ask you a question on his behalf. Did Munroe & Co., on Saturday last, the 4th, tender you the freight and demand their goods? A. They might have done so at my agent's office; not to me.

Q. Not to you? A. No. On Saturday I know they

512 were at the agents', because the agents were telling me they had men in there looking about the sulphur or taking particulars—I know that.

By Mr. Reed:

Q. You had no communication with Ferdinand Baller & Co. notifying them about discharging sulphur prior to this notice, Claimant's Exhibit 8 Baller? A. No.

Q. This letter was the first communication you gave them of your discharging the sulphur? A. Yes.

513 Q. Now, when you heard those rumors about sulphur being allowed to pass, you say that you communicated with the Austrian Consul. Was he the only official that you——— A. (interrupting) No. I used to frequently see him and talk with him, you understand, and of course he didn't know—he couldn't give me any information on the subject—positive information.

514 Q. Did you communicate with Ferdinand Baller & Co. on that question? A. No.

Q. Did you communicate with any of the shippers? A. There was a clerk of them, you understand; we used to see each other every day in the office; but Ferdinand Baller I have not seen.

Q. Did you communicate with any of the shippers of the sulphur as to the action of the Spanish government? A. No, with none of them.

515 Q. Messrs. Baller & Co. also protested, did they not, on the subject—against your discharging? A. Yes. I believe so, you know. Because I handed the protest to the lawyer and didn't take any particulars.

Q. You also took a proceeding, did you not, against the sulphur shipped, or have some legal proceeding? A. I told the lawyer to answer to all questions. I don't know whether he has done it or not. He promised to do it when I sailed, but I don't know.

516 Q. When was it you began to discharge the sulphur? A. On the 27th, the very same day. We would have done it on the 26th, but bad weather prevented us from doing so.

Q. And you finished on what day? A. 7th of May.

Q. And you sailed on what day? A. On the 8th, in the morning.

Q. Then the postal card which you wrote to Baller & Co. (Exhibit 13), was written on the day that you finished discharging? A. Yes.

Q. Where did you go from Girgenti? A. To Messina.

Q. And there you loaded with fruit? A. Yes.

517 Q. Green fruit? A. Only fruit.

Q. Only fruit? A. Only fruit.

Q. Had you arranged to ship fruit there before you left Girgenti? A. It was arranged before we arrived in Girgenti.

Q. You took a full cargo of fruit, I understand? A. No, I couldn't take it, because I had to take ballast, because I discharged the sulphur, and I had to leave
518 goods behind.

Q. Tell me how many boxes of fruit can you carry? A. Boxes and half boxes, she would have carried 45,000—about.

Q. How many did you have? About 38,000 boxes? A. About 40,000, between boxes and half boxes—about.

Q. And your gross freight you testified was 1,600 pounds? A. Thereabouts.

Q. How many tons of brimstone were there?
519 About 2,200? A. About 2,200.

Q. And that made room for how many boxes? A. I couldn't tell you exactly, because I don't know what cubic space would take a ton of sulphur.

Q. Wouldn't about 18,000 boxes go there? A. I couldn't tell you that.

By Mr. Kirlin:

Q. You were intending to fill up with fruit, were you? A. Yes. The cargo was engaged; but I knew that only when I got to Palermo.
520

By Mr. Reed:

Q. You had instructions, however, to clear out at Girgenti and stop at Palermo? A. And proceed to Messina and Palermo.

By Mr. Hill:

Q. Captain, didn't you receive a protest against discharging from James L. Morgan & Co.? A. I received a protest from the shippers over there in the name of some of the consignees in New York; and I believe it wae Malcomson.

521

Q. Morgan? A. I don't know. A firm in New York. I couldn't be certain whether it was Morgan or not.

Q. The shippers were Sofio & Co.? A. I don't know. They said they acted in behalf of people in New York.

Q. Don't you recall whether it was John Sofio & Co.? A. I couldn't tell you, because I transferred that to the lawyer over there.

522

By Mr. Reed:

Q. Where is Licata? A. Licata is a few miles from Girgenti.

Q. Do you know whether the *City of Truro* loaded there when you were there? A. No, I don't know about that. We don't 'get communication there like we would get it here with the "Herald," you know.

Q. Do you know the steamship *Europa?* A. No.

523

Q. Do you know she sailed from either Licata or Girgenti on the 30th of April with 2,500 tons? A. She might have sailed, but I don't know.

By Mr. Hill:

Q. You did hear, didn't you, that vessels were sailing with sulphur? A. I didn't hear anything there. It is a small place; you don't get news. I seen in the papers that one had been captured; whether it was the truth I don't know.

524

By Mr. Reed:

Q. You had nothing but sulphur shipped at Girgenti? A. Nothing else but sulphur; and from Trieste we had a portion on board.

Q. Not much? A. A couple of hundred tons.

Q. Now, the shipment of sulphur and your sailing with a load of sulphur was the most important thing you had to think of at Girgenti, was it? A. The body of the cargo?

Q. Yes. A. 2,200 tons we would call half of the cargo.

525 By Mr. Hill:

Q. Half a load? A. Half a load.

By Mr. Reed:

Q. It was a matter of great importance whether you should turn it out or not? A. I don't know whether it was a matter of importance. One cargo or another is the same thing, as long as you earn the freight.

526 Q. Was it not a matter of importance to think about at that time? A. To think of what?

Q. Whether you should carry that sulphur, or leave it there? A. The matter of importance for me was to think then if it would be best to put it ashore instead of carrying it, to be sale in the navigation.

Q. But you made no other inquiries than those you have mentioned? A. About what?

Q. No other inquiries about whether you should carry the sulphur or not than the inquiries you have mentioned? A. No; because all the inquiries I could have made there, you understand, I don't know how much faith I could have placed in them, and I supposed the owners were looking on the other side. Officially we could get nothing.

527

Re-Direct by Mr. Kirlin:

Q. You say you were in communication with the Austrian Consul almost daily? A. Not daily, but almost every day.

528

Q. And he, you say, had no official information on the subject up to the time you sailed? A. No, he had not up to the time I was working the cargo in.

Q. When did you see him last? A. I saw him last when I was clearing the ship.

Q. Had he any information then?

Objected to.

A. No, not so far as I know.

By Mr. Hill:

Q. Did you ask him? A. No, I didn't ask him. But the Consul over there is supposed to give you a notice.

By Mr. Kirlin:

Q. You say the matter was discussed between you? A. We talked about—about this war question and one thing and another, you know.

Q. Your agent there, you said, was Mr. William 530
Peirce? A. Yes.

Q. He was an English speaking man, was he not? A. No, he speaks only a little English, although he is from English parents.

Q. Did he know anything definite about this?

Objected to.

Q. So far as your communications with him tended to show?

531

Objected to as calling for a conclusion.

A. I don't know.

Q. He was your agent? A. Yes.

Q. Did you discuss the matter with him? A. As to what?

Q. As to whether this was contraband or not? A. Well, of course, we talked the matter over several times, you know.

Q. Did he know anything about it? Did he know, 532
or did you learn from him? A. Yes. Hold on! The day when I sailed I saw a notice from the Consul—yes, I remember now—a notice from the Consul to say that sulphur—that there was a communication from the prefect that it was agreed between the two powers that sulphur will not be ——

By Mr. Reed:

Q. Taken? A. Taken; but officially it was not confirmed.

By Mr. Hill:

Q. The prefect is official? A. No; but officially from Spain to Italy—it was not given officially—only a matter of a verbal arrangement. Of course, the verbal arrangement you can't believe.

By Mr. Kirlin:

Q. If I understand your testimony, the statement of the prefect was that it was not confirmed, that it
534 was to be free? A. It was verbally spoken that it is free, and that the Spanish ships had instructions to let it go free; but not officially—they could not let it go officially.

Q. That is, they would not give it officially to Italy? A. To Italy, no.

Q. That was the information that the prefect gave you? A. Yes—when I was clearing the ship.

By Mr. Reed:

535 Q. What do you mean by when you were clearing the ship? The day you sailed? A. On the 7th, in the evening, about eight o'clock, and I had already my clearances.

By Mr. Kirlin:

Q. In the notices that you sent to the shippers, the translation of which is embodied in Claimant's Exhibit 9, you said that you had left the cargo under the care of the mercantile agent, Mr. William Peirce. A.
536 Yes.

Q. What did that mean? A. Because it was stated on the bills of lading that the cargo to be landed—Just repeat the question.

Q. Left in the care of the mercantile agent. Did you leave it to the care of Mr. Peirce? A. I left it in the care of Zenobio Urso also, because afterwards, when the lawyers came down, they said it is to be given in the care of the man that has got it in the warehouse.

Q. Is he the mercantile agent—Zenobio Urso? A.

He is the warehouse keeper; of course in the mercantile business.

Q. Did you, as a matter of fact, consider it safe to bring brimstone?

Objected to as immaterial, irrelevant and incompetent.

A. No, I did not think it safe. When you see in the papers the ships are stopped with sulphur you 538 would not call it safe.

Mr. Hill: Objected to.

Re-Cross by Mr. Hill:

Q. (Paper shown witness.) Is that paper the substance of the statement by the prefect to which you just referred as to the arrangement between the Italian and Spanish governments? A. Yes, the substance—no, that was a paper that was sent by the Consul to 539 my agent.

Said paper is offered in evidence and marked Libellant's Exhibit B, June 8, 1898.

Mr. Kirlin: Objected to on the ground that this is not the paper that the captain says he saw, nor the notice, the paper referred to by him being a notice from the Consul to his agent.

By Mr. Kirlin:

Q. (Paper shown witness.) Is that paper a translation of it? A. This is the 18th of May—yes. There 540 was a notice given to the agent by the Austrian Consul, but none to me.

By Mr. Hill:

Q. The Austrian Consul gave a notice to the agent? A. Yes.

Q. Substantially to that effect? A. On those terms, yes.

541 Q. Given to the agent, but not given to you? A. No.

Q. But you knew it was given to the agent? A. I heard them read it. The vessel was clearing then, but the cargo at the same time was landed.

By Mr. Reed:

Q. Captain, did you receive a protest of which that is either the original or a copy? (Paper shown wit-
542 ness.) A. I believe I received one of these. I don't remember the name, if it was Baller, but one of them I received.

Mr. Reed offers said paper in evidence.

Objected to on the ground that that particular document has not been proved to have been delivered to the captain.

Marked Libellant's Exhibit C, June 8, 1898. (Printed as *Styria's* Exhibit F5, sub. p. .)

543 Re-Re-Direct by Mr. Kirlin:

Q. (Paper shown witness.) Is this document following it the answer that you made to that protest? A. The lawyer did, not me.

Q. That is it? A. Yes.

Q. What is the date of this? A. 11th of May.

Q. And by whom was it signed? A. It was sent from my lawyer in my name to Ferdinand Baller & Co.

544 Said paper is marked Claimant's Exhibit 16, June 8, 1898. (Printed as *Styria's* Exhibit F6, Feb. 14, 1899, p. .)

Q. What is your nationality, captain? A. Austrian.

Q. What is your native language? A. Well, we speak Italian in the seaports.

Q. What is your best tongue? A. Italian. That is the only language I can speak well, though I speak three or more. I can speak German, French, Spanish, and Slavonic, too—along with my business, not

545

fluently; I believe English is the best I can speak, and French.

Q. Next to the Italian? A. Yes. I can speak right enough with commercial people; but with lawyers you have got to be very careful! They make you think too much!

546

Deposition of ANTONIO G. SCOPINICH, recalled for further direct examination, taken on behalf of claimant, pursuant to notice, before James T. Kilbreth, Notary Public, at No. 5 Beekman street, New York, October 18th, 1898.

ANTONIO G. SCOPINICH, recalled for further direct examination, testifies as follows:

DIRECT EXAMINATION by Mr. Kirlin:

547 Q. Captain Scopinich, on your previous examination, pages 60 and 61, in two of the questions put by me, the word "prefect" was used in connection with an inquiry as to what you had heard when clearing the ship with regard to an alleged understanding between the Spanish and Italian Governments that sulphur would not be treated as contraband of war, notwithstanding the royal proclamation; and in answer to one of the questions you assented to the suggestion that you had received information from the prefect. Do you desire to make any correction in regard to that? 548 A. Well, it must be a mistake there, because I never saw the prefect, or saw any document from him. Only the paper I saw the Austrian Consul handed to my agent. So I repeat that it must be a mistake there.

Q. Who was it that told you what you testified you heard about this understanding as you were clearing the ship? A. The agent was talking the matter over to me.

Q. What was the name of the agent? A. Mr. Peirce.

Q. William Peirce? A. Yes; and at the same

549 time he handed to me the Consul's statement—not of the prefect's.

Q. The Consul's statement? A. The Consul's statement—to read it. That was the 7th of May, about 8 or 8:30 P. M.

Q. Prior to that had you any information of any understanding between the governments on that subject? A. No. But the newspapers I was reading
550 daily, you know; I saw in the newspapers that there were negotiations going on.

Q. But of the result of the negotiations? A. As I said in my statement before, that, of course, sulphur would be let go free, but not officially confirmed, you understand. Of course that meant that temporarily they would let it go free—temporarily, you understand. That was the way it was stated in the newspapers.

Q. And this information that you got from William Peirce was accompanied, you say, by some paper from
551 the Austrian Consul to Peirce? A: To Peirce, yes.

Q. That was the first that you knew about the matter officially, was it? A. Yes.

Q. Captain, have you got with you a list of the expenses you paid in Girgenti for discharging and land ing and storing this cargo? A. Yes.

Q. (Paper shown witness). Is that it? A. Yes, that is it.

Q. That is the list of charges paid by you, is it? A. Paid by me.

552 Said list is marked Claimant's Exhibit 17 for Ident. Oct. 18, 1898.

Translation of same marked Claimant's Exhibit 17a for Ident., Oct. 18, 1898.

(By consent the translation is attached to the minutes.)

Q. The first item there, captain, of Lire 6,984.88 refers to the expense of discharging under sail. What does that mean, "under sail"? A. That is, the

lighters would come alongside and fetch the sulphur away.

Q. What does "under sail" mean? A. It is because they generally sail to the place.

Q. Sail lighters? A. Yes.

Q. Does that include the pay of the men on the lighters? A. Yes.

Q. That was a lighterage charge? A. Yes; to convey the sulphur ashore. 554

Q. You paid that? A. Yes.

Q. Was that a fair and reasonable charge? A. That is the usual charge of the place, as far as I got information—as far as my information is concerned that I got from the people in the town; because I was looking after the people in the town to see whether I was paying right or wrong.

Q. The next item seems to be for weighers' charges on delivery of sulphur ashore? A. Yes.

Q. Did you have it weighed out? A. Yes, weighed 555 out on shore, not aboard the ship.

Q. Weighed on the lighters? A. On shore. We used to keep the scales on shore and weigh it there—from the lighter into the scales.

Q. That charge of Lire 279.39 was paid also? A. Yes.

Q. Was that a reasonable charge? A. Yes.

Q. The next charge is for delivery clerk, Lire 90.00. What was his function? A. To avoid any mistake of the parties of each other—to deliver to each lighter— 556 to the party, you understand—the same quantity.

Q. Keeping the parcels separate? A. Separate. Yes. It was for that.

Q. Was that a usual charge? A. The usual charge.

Q. The usual rate, I mean? A. Yes.

Q. What was the payment to Custom officials for overtime? A. Lire 59.00. Because we would work later at night. Lire 59.00 for overtime.

Q. Did you have any expense for unloading-rope? A. Yes, I had a big coil of rope.

557 Q. New rope? A. New rope; brand new. We always have to have new ropes. The ropes that have been used for loading are no longer good for discharging.

Q. How often have you to get ropes for discharging cargo? Every voyage.

Q. Every discharge? A, Every discharge.

Q. Did you actually get new ropes for the landing
558 of this sulphur? A. Yes.

Q. Is that the cost of them? A. That is the cost of them. But our other loader at Trieste supplies us with ropes for the voyage, and this rope was intended for the discharge of sulphur in New York.

Q. In New York? A. Yes.

Q. But you used it there? A. But we used it there to discharge it there instead of New York.

Q. This is the cost of the rope, Lire 1,238.88? A. Yes.

559 Q. Did you keep an account of the coal consumed in running the winches? A. Yes. We kept a due account of the coal consumed for the winches. The winches were going, and our donkey boiler was not powerful enough to keep them going, so we had to use the main boiler, and that is how we had to consume a little more coals than we would have consumed by using the donkey boiler; but the work would have been retarded considerably.

Q. At what rate did you charge for the coal. A.
560 The usual market price

Q. There? A. Yes.

Q. And how much did that amount to? A. It amounted to Lire 1,440.00.

Q. When you went into Girgenti to load this sulphur had you any ballast aboard? A. When I came to Girgenti?

Q. Yes. A. No. Well, I had about ten tons, no more.

Q. Where had you discharged your ballast? A. At sea, the most part of it. and the----

Q. Whereabouts at sea? A. (Continuing) and the sweepings, say about ten tons, were put into the lighters there on arrival.

Q. And where had you discharged it? Whereabouts? A. On approaching Girgenti. I did not think it safe to discharge it before, because bad weather might have come on, you see.

Q. Have you any water-ballast tanks? A. None.

Q. Now, when you took the sulphur out, was it safe to proceed on your voyage without any ballast? A. No.

Q. You shipped ballast, then, did you? A. Yes.

Q. How much? A. I shipped about a hundred and odd tons—103.

Q. What was the cost of it? A. It cost about 206 lire.

Q. What were the stevedore's charges for unloading the sulphur? A. Lire 1.10 per ton. That came to 2,365 lire.

Q. What investigation did you make as to the proper charge for stevedoring? A. Well, the proper charge for stevedoring is about one lire for discharging coals; that is, a lire on 1,000 kilogrammes. That is the way. I asked the coal merchant what the master pays generally for discharging, and that is the information I had from him to guide myself by. Because there was not a case where a ship had been discharging sulphur in Port Empedocle, and so I could not get information in that line.

Q. Coal was nearest, was it? A. Yes.

Q. Nearest light cargo? A. Yes; yes, for a full cargo, you understand, or part of a cargo, that has been discharged there.

Q. Is that substantially the same rate? A. Here is a little more, perhaps; about ten cents more; but you have got to look at the nature of the cargo, which spoils the eyes of the people, and they always expect more for discharging sulphur.

Q. What is the charge for loading sulphur there?

565 A. I could not tell. Because Mr. Burrell has got a contract with Florio.

Q. You also consulted with your agent about this discharge? A. Oh, yes, decidedly; and I strongly recommended him to get the rate down as much as possible.

Q. What is your judgment as to the fairness of that charge—the rate of it? A. The rate of discharging?

566 Q. Yes. A. I think it is a fair discharging rate.

A. How many days did you have men working at the winch unloading sulphur? A. Thirty-nine days.

Q. What is the rate? A. At lire 2.50 per day; total lire 97.50.

Q. You have an item in your bill, "carriage hire for Girgenti." What was that for? A. Carriage hire to Girgenti. That was because I went to the lawyer for the ship's business; in fact, for this affair of the sulphur. Eighteen lire.

567 Q. Putting a lien on it? A. No, not then; before that. To acquire information from him. And besides these, I had some that I did not put in this bill. I used to pay them, you understand, as I was making them, and never kept a record, you see.

Q. What did you use for lifting the sulphur out of the hold and conveying it down into the lighters? A. I used tubs.

Q. Where did you get those tubs? A. I got those in Girgenti.

568 Q. Did you buy them? A. Yes.

Q. What did you pay for them? A. I bought them as I could get them from a man that had a few barrels.

Q. You bought barrels? A. Yes.

Q. And made them into tubs: A. Yes. Just petroleum barrels; and I cut them in two and made them into tubs.

Q. How many barrels did you buy for this purpose? A. We bought twenty.

Q. How much did you pay for them? A. Eighty-two lire for the twenty. I had a carpenter to fix

those barrels while we were working, six days—fixing those barrels as we were unloading over the side—cutting them up.

Q. How much did you pay the carpenter? A. Six days, at five lire per day.

Q, Thirty lire? A. Thirty lire.

Q. What were your port charges? A. The port charges were lire 167.90.

Q. What were those for? A. I suppose broker's 570
charges, agency and consular fees. Pilotage. I couldn't recollect if there is a separate voucher for that.

Q. Would pilotage be covered by as small an amount as that? A. I think so. The pilotage is only a small expense—50 odd lire as a rule. I don't know, I couldn't be sure, if the pilotage is included in this; but there must be a detailed account there.

Q. What would this amount to if it was there? A. The pilotage would be about 50 odd lire.

Q The cash to the captain and the damage to the 571
lighter had no connection with this matter? A. They had no connection with it.

Q. Telegrams, lire 161.10. What was that for? A. This was to communicate with the lawyers, to communicate also with the shippers and receivers, and also with Mr. Florio, the general agent for the ports of Sicily.

Q. Were those in connection with this re landing of the sulphur? A. Yes. Because my own telegrams that I exchanged with the owners I kept the vouchers 572
of and sent them on.

Q But they had nothing to do with this matter? A. It has nothing to do with this bill.

Q. They are not included in this lire 161.10? A. No.

Cross Examination by Mr. Burlingham:

Q. Can you recollect how many days before the 7th of May you had read in the papers about this unofficial agreement between the governments? A. Well, you

573 Antonio G. Scopinich.

know this understanding between the governments, that was only the last day, I think.

Q. What do you mean by the last day, the 7th? A. Yes. That was when we were finishing the loading.

Q. Had you had any telegrams or letters from Burrell & Son prior to that about these negotiations between Italy and Spain? A. No.

Q. Had your agent Peirce had any? A. Only the
574 Austrian. They hurried me up in the discharging, of course.

Q. Did Mr. Peirce, your agent there, or did you, have any communications, telegraphic or by letter, from Burrell & Son, with reference to the action of the Spanish Government with reference to sulphur? A. No.

Q. Did yon notify Burrell & Son by cable or letter of the fact that negotiations were being carried on between the Italian and Spanish Governments with ref-
575 erence to sulphur? A. No.

Q. You knew about it? A. About this?

Q. You read it in the papers? A. Yes, I was reading it daily, because they were a long time negotiating and without any conclusion. But the last day, as I said before, I heard that there was a temporary agreement for them to let the sulphur go free, but not officially. They would not give it officially.

Q. You began to put this sulphur out of the *Styria* on the 27th of April? A. As far as my memory goes.

576 Q. And you did not finish it until the 7th of May? A. The 7th of May.

Q. Now, during those ten days, you read in the papers every day—— A. (Interrupting) I was daily reading the papers.

Q. You read in the papers every day of negotiations being carried on between the Italian and Spanish Governments in reference to sulphur—whether it should be contraband or not—didn't you? A. I was reading the papers to see whether I could pick up any information worth——

Q. But you did see something in the papers abou negotiations that were being carried on? A. Yes, but not every day; it was not every day.

Q. Can you tell us the first day? A. About the end of the discharging.

Q. Towards the end? A. Yes; it might be two or three days before.

Q. And it looked as though they were coming to some kind of an understanding, did it not? A. It 578
looked as if they were.

Q. Why didn't you notify Burrell & Son then, and stop your discharging until you heard from them? A. Because I supposed they had the news themselves over there in England better probably—far ahead—than ourselves. Of course you know the telegraphic communications go over the world, and you hear them in America before you hear them in Europe.

Q. But the day before you sailed, on the 7th, you did read in the papers that the governments had come 579
to an agreement—to an understanding? A. Yes—not to an understanding, not to a safe understanding, but a temporary understanding, you know.

Q. To the effect that sulphur temporarily would not be treated as contraband of war? A. Yes.

Q. In spite of the previous proclamation? That was so, was it not? A. Yes, but the papers said not officially confirmed, you see. That meant, of course, they could withdraw it at any moment.

Q. The newspapers in which you read about these 580
things were what papers? A. I could not tell you. I believe the Sicilian "Courier;" I don't know; something like that; the paper published in Palermo—the largest paper published in Palermo.

By Mr. Regensburger:

Q. How long would it take a Palermo paper to reach you? A. About half a day, I think.

Q. Issued that day, you think, or the day before? A. The same day.

581 By Mr. Hill:

Q. Did you make these payments yourself? A. Yes.

Q. Did you pay all these moneys yourself? A. Yes.

Q. You had the coal aboard? A. Yes.

Q. You had that aboard? A. Yes. At the same time we reckoned it in the bill.

Q. You reckoned it at the price then prevailing at
582 Girgenti? A. Yes. Girgenti is a coal place; they do discharge cargoes of coal there.

Q. And so with the ropes. You had the ropes aboard, but you reckoned them at a price? A. At a price; at a fair price.

Q. At the price at Girgenti, or the price they stood you in? A. At a fair market price in Sicily and Austria. You understand, it does not vary very much.

By Mr. Reed:

583 Q. You say, captain, that you had vouchers for all these payments? A. They were sent to the owners, of course. Detailed accounts in connection with this bill. Some of the invoices we can't take; they have got to stop until the final sailing of the ship, and we only get a copy of this general account for our guidance.

Q. Then you cannot tell us now to whom you made these various payments—the persons to whom you made them? A. Oh, yes.

584 Q. The names? A. Yes. I made them to William Peirce, the agent. I paid him for those charges; except for the ropes and coal—of course, I didn't pay him that. But I mention the coal and ropes, so that it would not be forgotten,

Re Direct by Mr. Kirlin:

Q. Is that Peirce's receipt at the foot of the original exhibit, Claimant's Exhibit 17 for Ident? A. Yes.

Q. Translate that note at the foot of the original, Exhibit 17 for Ident? A. (Witness reading). "From

the above sum deduct Lire 2,678.88, because they were spent by the captain, and I got a receipt for Lire 11,621.37."

Q. What does that mean? Does that refer to the two items for coal and rope? A. Yes, for coal and rope.

Re-Cross by Mr. Reed:

Q. Is that the amount of the two items for coal and rope? A. Yes. This bill was made out to me as the master of the *Styria*; and by mistake they added also the expense of coal and ropes, which I objected to, because I could not pay this bill with the two amounts, because really I had paid that—or the owners had.

Q. So you gave them a draft for the difference? A. So instead of making another bill out, they deducted it at the bottom, with the words before mentioned.

Q. In other words, you did not disburse these items to these individual parties who rendered the services, but you gave this amount to Peirce? A. Yes. But the barrels I paid for myself—at least, to a different party—the empty barrels for discharging the sulphur.

Q. Do you remember the person's name to whom you paid for the barrels? A. No. But there is an invoice at Mr. Burrell's office.

By Mr. Kirlin:

Q. Who were your agents here for that voyage? A. Hirzel & Peltrann.

By Mr. Regensburger:

Q. Florio gave you the cargo which you took in place of the sulphur? A. Yes, of course. He is our general agent in Sicily. What contract Mr. Florio has got with the owners we don't know. He orders the ships to——

Q. Did you know before you had discharged the sulphur what other cargo you were going to take from Girgenti? A. I did not take any. They offered me

589 almonds, but I would not take them. It was a small parcel—more bother than anything else.

Q. Did you know before you had discharged the sulphur what cargo you were going to get? A. Before I discharged the cargo?

Q. Yes. You knew the cargo you were going to get in place of it, didn't you?

MR. KIRLIN: In place of this, you mean?

590 MR. REGENSBURGER: Yes.

A. No. I only had a telegram to follow Florio's instructions.

Q. Did Florio tell you anything before you discharged the sulphur as to what cargo you were going to get? A. No. And that was a thing I wanted to find out. For I didn't know anything. Because, if I knew the cargo she was going to take I would have ballasted the vessel a little more. And the proof is

591 this: That in Palermo I had to take ballast.

Q. Florio would not give you the information? A. I suppose it is not their custom to inform captains what they are likely to do.

Q. You tried to get information from Florio, but you did not get it? A. Of course I asked the agent, you understand, but he didn't know anything.

(Translation).

DISCHARGING EXPENSES STEAMSHIP *STYRIA*.

592 1898,

May 7, Expense of discharging under sail (lighters and men).....	*Lire*, 6,984	88
Weighers charges on delivery of sulphur ashore.....	279	39
Delivery clerk, keeping parcels separate.....	90	00
Payment to Customs' officials for overtime.....	59	00
Captain's account (No. 1) for ropes for unloading sulphur..	1,238	88

Antonio G. Scopinich. 593

Captain's account (No. 2) Coal bill (firing donkey boiler for unloading)	1,440 00	
Accounts paid to lawyers	300 00	
Ballast, 103 tons at 2 lire per ton	206 00	
Stevedore, hoisting sulphur from the hold, 2,150 tons at lire 1.10	2,365 00	
Men working the winches, 39 days, at lire 2.50	97 50	594
Power of Attorney to Notary Gaglio	10 60	
Carriage hire for Girgenti	18 00	
Carpenter, 6 days (coopering tubs on discharging	30 00	
Port charges	167 90	
Telegrams	161 10	
Cash to the Captain	652 00	
Damage to a Lighter	200 00	595
Total	*Lire* 14,300 25	

Charges in Captain's Statement of Expenses to his Owner Appertaining to the Discharge of the Sulphur.

1898,

May 7, 20 empty barrels (made into tubs) to discharge sulphur... *Lire*, 82 00 596

Port Empedocle, 7th May, 1898.

597 Henry De Thianich.

Deposition of HENRY DE THIANICH, taken on behalf of libellant in the first four entitled suits and the claimant in the second four entitled suits, upon notice and by consent, before James T. Kilbreth, Notary Public, at No. 5 Beekman street, New York, October 4, 1898:

NEW YORK, October 4, 1898.
11 o'clock A. M.

598 Present—Messrs. CONVERS & KIRLIN (by Mr. Convers) for libellant in the first four suits, and claimant in the second four suits.
Messrs. SULLIVAN & CROMWELL (by Mr. Hill) for Alfred S. Malcomson.
Messrs. BOWERS & SANDS (by Mr. Reed) for Schuyler L. Parsons.
Messrs. STERN & RUSHMORE (by Mr. Regensburger) for John Munroe *et al.*

599

HENRY DE THIANICH, called on behalf of libellant in the first four entitled suits and the claimant in the second four entitled suits, being duly sworn, testifies as follows:

DIRECT EXAMINATION by Mr. Convers:

Q. What is your occupation and residence? A. I am a master mariner, a captain; residence in Trieste,
600 Austria.

Q. What vessel do you command? A. The *Abbazia.*

Q. How long have you followed the sea? A. Fifteen years.

Q. How long have you held a master's certificate? A. A master's certificate? A captain's certificate? Because we only have one certificate. Eleven years.

Q. How long have you commanded the *Abbazia?* A. Sixteen months.

Q. Who owns the vessel? A. The Austro Americana Company, an Austrian corporation.

Q. Who are the general managers? A. Burrell & Son, Glasgow.

Q. What is the gross or net tonnage of the vessel? A. 1,838 tons net register.

Q. When did you first receive any instructions with regard to a cargo of sulphur *ex* the *Styria*? A. During my stay at Trieste. Just two days before I left I 602
got instructions from Glasgow, from Burrell & Son, to proceed to Girgenti to load the sulphur that had been discharged by the *Styria* and bring it to New York.

Q. And when did you reach Girgenti? A I reached Girgenti the 24th of August, at 4 o'clock in the afternoon. I gave the same day written notice to my agent, Florio, who is at the same time one of the shippers, that the ship was ready to load.

Q. Proceed and state what took place with reference to your loading of the sulphur? A. During the time 603
we were in Girgenti?

Q. Yes. A. After I gave a written notice there, the agent told me that the cargo was sequestered, and that the storekeeper, who had been appointed by the Court, would deliver the sulphur when the shippers would authorize him to do so. But the shippers refused to give any authorization. So I went to Girgenti to confer with my lawyer and the shippers' lawyer. Port Empedocle is the sea port of Girgenti. I was obliged to go to Girgenti. We went together 604
to the shippers' lawyer, Mr. Consiglio, and we asked him if he could not start the loading—if he could get the authorization from the shippers. His authorization would have been just the same. He replied that he thought that there would be no opposition from the shippers, but meantime he would telegraph to them. The telegram was sent to them in my presence, asking them to authorize the storekeeper to deliver the cargo on board the *Abbazia*. At the same time I explained to the lawyer that the manager of the *Abba-*

605 *zia* and the consignees in New York had come to an understanding about this matter; and the lawyer told me that he had a letter from two of the shippers, and he showed me the letter, where the shippers said that they knew quite well that the managers and the consignees in New York had come to an agreement. After I left Dr. Consiglio I went back to Port Empedocle to prepare everything and start the loading for 606 the next day, hoping always that there would be no direct opposition from the shippers. But the next morning (the next morning was the 26th), instead of starting loading, I had a letter from my agent, in which he stated that the shippers refused to authorize the storekeeper to deliver the sulphur. Such being the case, I requested the agent to telegraph to the different shippers and ask them again the authorization—to telegraph one more time to them to authorize the storekeeper to deliver the cargo; and at the same 607 time I protested against them for all the damages consequent upon the delay. I sent a telegraphic protest. I produce a copy of the telegram and a translation of it. I omitted to state that Amato, one of the shippers, made no opposition.

Witness produces two copies of said telegram, one copy being addressed to Florio, at Palermo, and the other to Baller-Fog-Sofio, at Messina, and also a translation of said telegram.

608 Translation marked Libellant's Exhibit 1 for Ident., Oct. 4, 1898; Florio copy, Exhibit 1a for Ident.; Baller-Fog-Sofio copy, Exhibit 1b for Ident.

WITNESS: This is a circular telegram to all at once. (Witness reads translation): "Following Burrell "agreement with New York consignees sulphur, ex "*Styria*, your refusal to the storekeeper to permit "the said sulphur to be delivered on board the *Abba*-"*zia* is inexplicable. The Steamer is waiting here "ready to load since 3 days. I protest against you

"for all the damages and consequences of such delay. "Capt. Thianich." The date is August 27th, and it is addressed to all the shippers except Amato; it was addressed to Florio at Palermo, and Baller, Fog and Sofio, Messina. I produce the telegrams I had in answer from the shippers. (Witness produces telegrams and translations.)

Translation of telegram from Sofio, marked Libellant's Exhibit 2 for Ident., Oct. 4, 1898; 610
original marked Exhibit 2a for Ident.

WITNESS: The telegram from Sofio is as follows: "We are not cognizant of the agreement between Burrell and the consignees at New York, not having "any news from our constituents. We did not refuse "our consent to the judicial storekeeper, we have "only telegraphed to him informing him that we did "not care to prejudice ourself. At the same time we "telegraph New York asking instruction. Refuse to 611
"acknowledge your protest. SOFIO."

It is dated the same date.

The second one is from Fog, and is dated August 27th.

Translation of telegram from Fog, marked Libellant's Exhibit 3 for Ident., Oct. 4, 1898; original marked Exhibit 3a for Ident.

WITNESS: The telegram from Fog reads: "We don't "understand your asking our consent to deliver the 612
"sulphur, not having any interest in it. Requested "by the storekeeper, we telegraph him to act in ac-"accord with the Law. We refuse to acknowledge "your protest. FOG."

WITNESS: The next was from Florio, and is of the same date.

Translation of telegram from Florio, marked Libellant's Exhibit 4 for Ident., Oct. 4, 1898; original marked Exhibit 4a for Ident.

613 Henry De Thianich.

WITNESS: The telegram from Florio reads: "We "refuse to acknowledge your protest. We did not "refuse neither did we consent to deliver the sulphur, "which has been sequestered not by our instance but "by Capt. Scopinich (*Styria*). FLORIO."

WITNESS: The next is from Baller, and has the same date.

614 Translation of telegram from Baller, marked Libellant's Exhibit 5 for Ident., Oct. 4, 1898; original marked Exhibit 5a for Ident.

WITNESS: The telegram from Baller reads: "We "are ignorant of the agreement between your owner "and the New York consignees sulphur ex *Styria*; "we did not refuse our consent to the judicial store-"keeper to deliver the sulphur to the *Abbazia*. We "telegraph him to act according the Law. We refuse "to acknowledge your protest. BALLER."

615 Understanding that those firms were *siebbly* (a word meaning they did not refuse, but they did not consent)—the storekeeper was not intelligent enough to understand how the matter was, so he found out that the captain of the steamer and the shippers did not agree, and under such circumstances he refused to deliver the sulphur. When I found out that it was not possible to have the sulphur delivered from the storekeeper, I went to Girgenti—or my agent went to Girgenti—and
616 tried to get the authorization from the President of the Court to remove the storekeeper and find another one who would take the responsibility to deliver the cargo. That was the Sunday; that was the 28th of the month. The President of the Court authorized to remove the storekeeper and appoint in his place another storekeeper. This was all that was done in Girgenti.

After the transferment had been made between the one storekeeper and the other storekeeper we started loading. That was Monday, the 29th. But still we thought without the consent of the shippers we did not want to interfere. September 1st I had a letter

617

from my lawyer, a copy of part of which is here, because I translated only what was relevant. The whole letter is attached, but I translate only what is relevant to this matter. (Witness produces letter and translation.)

WITNESS: This is a letter from my lawyer, Mr. Loggia, ,to me, drted September 1st.

Translation of letter from Loggia marked Libellant's Exhibit 6 for Ident., Oct. 4, 1898; original marked Exhibit 6a for Ident. 618

WITNESS: The letter from Loggia reads: "Messrs. "Baller & Sofio have informed their lawyer that "Messrs. Burrell and the New York consignees came "to an understanding; therefore they consent the "sulphur to be loaded, and the causes pending before "the Judicial Court shall be annulled there."

I finished loading the 4th of September at 11 A. M., and left the same day for New York direct. 619

Q. State what expenses you incurred in releasing the sulphur and in putting it on board your vessel?

Witness produces statement. It is marked Libellant's Exhibit 7 for Ident., Oct. 4, 1898.

Witness refers to said statement, and answers as follows:

WITNESS: Towage of 2127 13-20 tons of sulphur at 30 Lira and 12c.....	Lira	6,638.44
Control to sulphur-weighing (official weigher), 7 days at 35 L.....	"	245.00
Surveyors on board	"	70.00
Custom House, overtime for loading, .	"	42.60
1st Custody (first store-keeper) indemnity (fees for the store-keeper, for the men).....	Lira	350
His expenses for the transferment.....	"	20
		370.00

620

621 The transferment means when we changed the storekeepers. The Court gets the 20 Liras.

2nd Custody, indemnity and expenses.. " 96.50

Lawyer account (amount deposited at the Court)..... " 1,000.00

That is the expenses; because I didn't pay the lawyer; I left the deposit.

622 I mean my lawyer. He got about 900 liras advance from the manager of the ships, and he wanted some 970 liras more, and I was obliged to make a deposit of 1,000 liras.

La Loggia bill; lawyer's bill to remove the sequester..... " 62.45

That was the lawyer's bill for the expenses of the Marshal in removing the sequester.

623 Bill for telegrams, traveling expenses to Girgenti, etc..... " 355.00

Those expenses were the expenses of myself and the agent of the shippers, and telegraphic expenses; the protest and the legal expenses, and traveling from Empedocle to Girgenti.

Certificate for substitution of ship..... " 12.40

Lawyer's advances..... " 900.00

Pilotage S. S. *Abbazia*..... " 56.25

624 That is the custom of the port.

Mooring and unmooring ship..... " 60.00

Stevedoring for sulphur..... " 638.25

Because the sulphur is brought alongside the ship, and they have to take it from alongside the ship and put it in the hold, and that is separate—that is stevedoring.

Port charges (anchorage charges..... " 2,811.00

Boat hire, 11 days..... " 55.00

625

This boat was employed, according to the custom of the port, to carry any one wishing to go to and from the ship, and the ship paid the expense.

Telegram and postage..... " 20.85

Agency fees. That is the commission of theagent of the *Abbazia*..... " 136.00

Demurrage, 3 days at pounds .25—75

Coal consumption,

626

30 tons at 10s. " .30 30/100 pounds sterling.

That coal was consumed, the ship waiting there the first day, and we used that coal. We did not know how the matter was to come out, how we should take the cargo in, and all those things; and the ship cannot load in the port; she is obliged to go outside the port and be loaded outside, and so the ship wants to be ready about twelve or eighteen hours before, and keep the engines and everything ready, and complete the cargo outside of the port. When you get the order to load you have to go outside the bar and complete the loading there.

627

Q. What is the total? A. The total is 13,579.74 Italian liras, and 105 pounds sterling. The rate of exchange is 26 liras on a pound sterling.

Q. What about the storage? A. I was obliged to pay storage—one per cent. on the quantity deposited—one per cent. in kind. So I left there one per cent. on the full total—the full lot; so much for each lot—proportionate for each lot. I left sulphur. The custom of the port is to take it in kind. The custom of the port is to charge one per cent. for one year and no less. If he is there one day or one year it is just the same.

628

By Mr. Hill:

Q. For one year, or for any less time? A. One year or one day, it is just the same; you pay one per cent.in kind.

629 Henry De Thianich.

By Mr. Convers:

Q. The total amount, then, of these charges and expenses is about how much? A. 13,579.74 liras, at the rate of exchange, 26 liras is equal to 522 pounds, 5 shillings and 11 pence; and the 10 pounds demurrage and coal makes a total of 627 pounds, 5 shillings, 11 pence; plus one per cent. of the full quantity of sulphur, taken in kind.

630 Witness: I produce the Customs Declaration, vised by the American Consul, and a translation of it.

Said Customs Declaration marked Libellant's Exhibit 8 for Ident., Oct. 4, 1898, and the translation Libellant's Exhibit 8a for Ident. of the same date.

Witness: This is dated the 4th of September. I left on the 4th. It reads as follows: "Customs House "of Port Empedocle. It is hereby certified by the
631 "undersigned that by the books of this Customs House "it appears that the sulphur, 2,194,621 Kilos, shipped "per S. S. *Abbazia*, flying Austro-Hungarian flag, "Enrico de Thianich, Master, on the days between "August 29th and September 4th, 1898, bound for "N. Y., covered by the bills of lading No. 43, 44, 45, "April 23rd, and 46, 47, 48 and 49, April 24th, same "year, is exactly that discharged temporarily here by "the Austro-Hungarian steamer *Styria*, Scopinich, "Master.

632 "The present is issued at the request of Capt. E. "de Thianich, on his declaration that it will not be "brought up in Court against the Administration of "Finance or its agents.

"Porto Empedocle, Sept. 4th, 1898.

"The Receiver."

That is, the Receiver of the Custom House. It has also the certificate of the Consular Agency of the United States at Girgenti, which reads: "I, the un- "dersigned, Consular Agent of the United States, do

" hereby certify the foregoing signature of Mr. E. " Angelozzi is genuine, and I furthermore certify that " said Mr. E. Angelozzi, as he styles himself, the Col- " lector of Customs at Porto Empedocle.

" Girgenti, 4th September, 1898

" FRANCIS CISTTA,
" U. S. Consular Agent."

WITNESS: I produce documents from the Custom House at Port Empedocle, in which is stated the quantity of sulphur loaded by the *Styria* and loaded by the *Abbazia*. (Witness produces said papers.) 634

Said papers, consisting of seven sheets, are marked Libellant's Exhibits 9, 9a, 9b, 9c, 9d, 9e and 9f for Ident. Oct. 4, 1898.

WITNESS: This is what they call the Exportation certificate, in which is declared what quantity of cargo the ship has taken on board; and the weight of it is controlled by the Collector of the Custom House office in Port Empedocle, which is the only authority on this matter. 635

Q. Explain what it is? The certificate on page 2 shows the quantity of sulphur loaded on board the *Styria*, and it shows as well, on the fourth page, the authorization from the General Director of the Customs in Palermo, in which he allowed, at the request of the captain of the ship, to discharge the sulphur; and then it testifies the quantity that has been loaded on board the *Abbazia* from the same lot. One lot of the *Styria* was loaded: 431 tons and 446 kilos; I took 416 tons and 770 kilos of this lot. 636

By Mr. Regensburger:

Q. This was all discharged in bulk, was it not? A. All in bulk, yes.

Q. When I say it was discharged in bulk, I mean was it discharged in one mass? A. Separate lots; each lot separate.

By Mr. Convers:

Q. I want to show the difference between the quan-

637 tity taken on board and discharged of each lot. You have given us one lot. Now give the next. A. The second export declaration: The *Styria* loaded 103,144 kilos, and the *Abbazia* loaded 100,173 kilos. The third one: The *Styria* loaded 103,144 kilos, and the *Abbazia* loaded 99,121 kilos. The fourth one: The *Styria* loaded 257,861 kilos, and the *Abbazia* loaded 249,555. The fifth one: The *Styria* loaded 515,723
638 kilos, and the *Abbazia* loaded 501,211. The sixth one: The *Styria* loaded 600,000 kilos, and the *Abbazia* loaded 576,180. The seventh one: The *Styria* loaded 257,861 kilos, and the *Abbazia* loaded 251,611.

And here is the per cent. list; that is the quantity brought here, and this is the quantity I had on board. (Witness indicating). The difference is one per cent. left; and, of course, you must allow in discharging sulphur, because of the dust; the wind will blow some of the dust of the sulphur away; so that they allow so
639 much per cent.

Q. Do you know what the amount of the percentage is that is allowed? A. It would depend on the weather, too. If it is blowing a little harder. They reckon about two per cent. or one and a half; between one and a half and two per cent.

Q. Dependent on the strength of the wind? A. Yes.

Q. Is this sulphur loaded while the vessel lies at the quay or in the stream? A. In the roads; in the river.

640 Q And how is the sulphur taken from the lighters alongside? A. From little lighters that come alongside

Q. The sulphur is in lighters alongside? A. Yes.

Q. And how is it transferred from the lighters to the steamer? A. We have little baskets; it is put in little baskets, about 40 or 50 or 60 pounds weight.

Q. How are these baskets transferred from the lighter to the steamer? A. They put outside of the steamer some hatches—I mean it is like a ladder; there are two or three men, and one gives it to the other, and it is

put in the hold. Every lighter carries only five or six tons of sulphur; they are little lighters. 641

Q And was any of this sulphur that was received on board weighed on the vessel? A. No. It is weighed on shore, under the control of the Custom House officers. They don't weigh it on board.

Q. Was the number of baskets that were carried from the lighters, the contents of which were emptied on board the *Abbazia*, tallied by those on board the *Abbazia?* A. No. Because the lighters come up—so many lighters come aboard—so many lighters they send from the shore; and the Custom House officers verify this. The distance is not far. 642

Q. In the transfer of the sulphur from the lighters to the vessel did you see any of it lost? A. No. It is never lost. Because the little lighter is alongside, and if any falls down it falls always on the same lighter; it is not possible for it to fall overboard; and we loaded in the daytime, we did not work night. 643

Q. And who handled these baskets in the loading from the lighters to the ship? A. Some men from the stevedores.

Q. Men from the shore? A. Yes, men from shore.

Q. Did any one from the ship have anything to do with that part of the work? A. Nothing; just prepared what they want and nothing else.

Q. What was done with the sulphur when it came on board? A. Where was it put? A. In the holds, each lot separate. 644

Q. Was it put at one part of the ship and then transferred to another part, or was it put in the home stowage at once? A. Where the sulphur was stowed there it remained. It was not removed.

Q. State where the sulphur was stowed—the different lots? A. (Witness looking at paper) The lot of 500 tons, Fog—that is, the original lot, I mean, always, the quantities corresponding to the quantities I gave. The original lot before loading was 500 tons from Fog; 350 tons were put in the No. 1 hold and

645 150 tons in the No. 4 hold—the top of the No. 4 hold. The Florio lot of 1,000 tons was stowed in the No. 2 hold and between-deck. The lot of 100 tons of Baller, in the between-deck, No. 3 hold. The lot of 250 tons Sofio, No. 3 hold. Lot of 100 tons, Amato, No. 4 between deck. Lot of 250 tons, Baller, No. 4 hold. That is how the sulphur was stowed on board.

646 Q. How was it stored on shore before it was weighed and put on board the *Abbazia*? A. It was in a separate yard—open. All the lots were separately kept there, and the sulphur weighed there.

Q. Do you know whether it is customary to stow sulphur in that way at that port? A. Yes. Because all the sulphur is stowed openly there; they have no closed warehouses; it is all open.

647 Q. After the cargo had been loaded on board did you take any other cargo before sailing for New York? A. Oh, I took a little quantity of almonds. That was separate.

Q. Were the hatches battened down all the way over from Girgenti to New York, or were they opened for ventilation? A. They were open when it was nice weather, of course. In bad weather they were closed.

Q. Did any water get down the holds during the voyage? A. No.

Q. Was any of the sulphur lost between Girgenti and New York? A. No, no sulphur lost.

648 Q. The sulphur discharged in New York was the quantity that you loaded on board at Girgenti? A. Yes.

Q. When did you arrive at New York, and where did you go to discharge your sulphur? A. I arrived in New York the 30th of September (that was on Friday) and went the next day to the foot of 42d street, Brooklyn.

Q. And did you then and there begin the discharge of the sulphur? A. Not on Saturday. I began the discharge of the sulphur on Monday.

Q. Was the vessel lying alongside the wharf, and was the sulphur discharged onto the wharf, or on lighters on the opposite side of the vessel? A. On the opposite side of the vessel—discharged in lighters.

Q. Where and by whom was the sulphur weighed that was discharged? A. The sulphur is weighed by the consignees—by the receivers' weighers.

Q. Where? A. On board—on deck.

Q. And how was it put from the deck aboard the 650
lighters? A. They take it with large—what you call——

Q. Tubs or buckets? A. Buckets, yes; with the winches.

Q. Are the buckets lowered on board the vessel by the ship's winches? A. By the ship's winches, yes.

Q. And who has charge of this work? A. The stevedores.

Q. Was any of the sulphur lost in discharging it on
to the lighters in New York? A. No; it can't be lost. 651
Only excepting so much per cent., which is the usual custom of the port here to allow for the dust.

Q. At the time of taking this deposition have you discharged all of the sulphur that is in the vessel? Is all your sulphur now discharged? A. No, not yet.

Q. About how much have you been putting out per day? A. We put out per day about 400 tons.

Q. And when do you expect to complete the discharge? A. On Saturday.

Q. Have you taken samples of the different lots? 652
A. Yes. Except one lot of Baller, because the Baller lot is under one lot of 100 tons, and if it will be free to-day I will take it.

Q. Will you take a sample of that and send it to me? A. Yes.

Q. Have you brought samples of the other five lots? A. Yes.

Q. Produce them.

Witness produces said five samples, and also a quantity in a wooden box.

653 Henry De Thianich.

Said samples are contained in tin boxes, and the tin boxes are marked respectively Libellant's Exhibits 10, 10a, 10b, 10c, 10d, for Ident., and the wooden box is marked 10e for Ident., Oct. 4, 1898.

Q. These samples are each contained in boxes, and each contain a paper stating the contents? A. Yes. I myself took the samples with the chief mate.

654 Q. What is the name of the chief mate? A. Mario Oliveti.

Q. Is he now present on board the ship? A. Yes.

Q. Will you produce him for examination on the written request of any of the proctors for the sulphur? A. Yes.

Proctors for the *Abbazia* will produce the sample of the remaining quantity of the sulphur as soon as it is uncovered, and it will be

655 marked Libellant's Exhibit 11 for Ident., Oct 4, 1898.

(Said sample of one lot of Baller to be produced and marked said Exhibit 11 for Ident.)

Q. How long have you run in the Mediterranean trade—between New York and Mediterranean ports? A. When?

Q. How many voyages have you made? A. Only for sixteen months.

656 Q. Prior to that where were you running? A. I was running with other steamers between England and South America, and Trieste and Fiume, Austria.

Q. And have you ever carried any sulphur except on this voyage? A. Yes. I have carried at other times sulphur.

Q. And have you carried sulphur before from Sicily to New York? A. Yes.

Q. And are you familiar with the proceedings incident to the port of loading? A. Yes.

Q. The Custom House proceedings and other neces-

sary proceedings for the shipping of sulphur and carrying it to New York? A. Yes.

Q. As soon as your vessel is discharged, or shortly thereafter, you are bound on a voyage to sea, and expect to sail with her? A. Yes.

Q. Was there any accident to the *Abbazia* on the voyage that could by any possibility have injured or lessened the quantity of sulphur on board? A. No; no accident. 658

Cross-Examination by Mr. Regensburger:

Q. Where did you take on your cargo of almonds? A. Girgenti.

Q. And did you take that on after you took on the brimstone? A. Oh, during the time. One day before I left I took on twenty tons only of almonds.

Q. The day you left? A. One day before I left.

By Mr. Hill: 659

Q. Captain, those figures that you gave us, do they show (I do not recollect, because there was so much of them) the actual expenses of loading the brimstone is distinguished from the separate and other incidental expenses to which you referred? A. They are expenses I had there.

Q. I know that. A. For loading the sulphur.

Q. I know that. But do they show the actual expenses for the loading itself, for the taking from the warehouse and transferring it to the vessel, as separate 660 from the rest of them? A. The expenses are all detailed there.

By Mr. Regensburger:

Q. I understand you to say, captain, that Amato assented to the taking of the 100 tons of brimstone which he had shipped to Munroe & Co. at the time of the request by you? A. Yes, Amato did not make any opposition.

Q. He consented? A. Yes.

661 Henry De Thianich.

MR. CONVERS: No claim is made against John Munroe for any delay or detention—Amato having consented on request of the ship's agent to the delivery of 100 tons.

Q. How many tons of brimstone, as a rule, do you load in a day? A. Where? Here?

Q. No. At Sicilian ports? A. About 400 tons.

662 Q. About 400 tons? A. Yes.

Q. And it would ordinarily take you five days to load 2100 tons? A. Six days.

By Mr. Convers:

Q. The same company owns the *Abbazia* and the *Styria?* A. Yes, the same company.

Q. And how many hours notice or days notice does the custom of the port of Girgenti or Empedocle require you to give before the shippers are bound to begin to load? A. By the custom of the port it would

663 be twenty-four hours after the ship's arrival.

Q. Is that after the ship's arrival or after the ship's notice of readiness? A. After the ship's arrival. Because after the ship sends the paper to the agent ——

Q. How much notice must the shippers have before demurrage begins? A. That you find out in the contract. You can show that in the contract—one of the contracts. I give written notice to the agent that 24 hours thereafter the shipper must begin to load the ship. The ship is advertised before the ship leaves

664 Trieste to the shippers that the ship is coming.

Q. You mean that the shippers are notified? A. Yes, notified before the ship leaves the port of Trieste, the home port, that she will be there on such and such a day ready to load. The shippers always get notice in time.

By Mr Hill:

Q. How long was that before? A. I can't tell you exactly. You can find out from the contract. It is in the contract.

665

By Mr. Reed:

Q. You don't know whether it was done at all? A. It was.

By Mr. Regensburger:

Q. How do you know? A. Because I saw a letter from Amato—because I saw a letter from Amato that the ship was coming.

Q. When did you reach Girgenti? A. The 24th.

666

Q. Where did you come from? A. Trieste.

Q. Empty? A. With a little general cargo for New York.

By Mr. Reed:

Q. Did you say that you had written to Amato? A. No; I saw a letter, I don't remember exactly whether it was Amato, but two of the shippers—I saw a letter where they say that they knew that the *Abbazia* was coming to take the cargo of the *Styria*; and our general agent there, Florio, gives notice to the shippers.

667

By Mr. Regensburger:

Q. You think he does? A. He does. I can testify that the owners have given notice to the shippers.

Q. You can't? A. I can testify.

Q. You know it is the custom for your agent to do it? A. I know too that the owner notified the shippers—to the agent—that the ship would be there.

Q. How do you know? A. I know because I read a copy of that letter there.

668

Q. Where? A. In Girgenti. This is a company that makes regular voyages; this company makes regular voyages; it is not one steamer chartered. They gave a separate contract; they have a contract between them. They must send so many boats; it is not only one boat going once a year, they have two or three boats a month there.

By Mr. Reed:

Q. That is the case when they are expecting to ship cargo? A. Yes.

Q. But when they are not expecting, that is different? A. But they were expecting to, because I telegraphed myself from Trieste.

Q. But you don't know whether they expected to ship anything by her? A. Who?

Q. The shippers in Girgenti? A. I read a letter that they knew the *Abbazia* was coming.

Q. But that does not show they were going to ship
670 anything by the *Abbazia* when she did come? A. Yes, they were going to take the cargo of the *Styria*.

Q. But, captain, all the shippers except Amato did not expect to ship any of the sulphur on the *Abbazia*, did they? A. Well, I don't say that it was him—I don't remember which was the letter—I know that I read one letter signed by two shippers—I can't exactly say which shippers they were, I should think it was Baller, or Sofio, or Amato—where they say they knew there was an understanding between Burrell and the
671 New York consignees that the *Abbazia* would come to Girgenti to take the cargo left by the *Styria*.

Q. You don't know when that letter was written? A. No, I don't know the date, but the letter is there; because it was a letter addressed to their lawyer, not to my lawyer.

By Mr. Regensburger:

Q. Did you know, captain, when you were at Girgenti, that the shippers of the brimstone on the *Styria*
672 had agreed with the owners of the *Styria* and the *Abbazia* to have the cargo taken from the Girgenti and sent on the *Abbazia* to New York? A. I don't know if they agreed or not.

Q. You didn't know it? A. I didn't know what agreement there was between them.

Q. Do you know of any stipulation that had been entered into between the shippers and the owners of the vessel? A. No, I don't know if there was any stipulation.

Q. You had not been informed of any? A. No.

By Mr. Reed:

Q. You had not been informed of that before you left Trieste? A. No.

By Mr. Hill:

Q. Then under the terms of this arrangement that you spoke of between Florio and the company it is Florio that is liable for demurrage if he keeps the ship from loading? A. Yes.

Q. Florio is liable to the steamship company? A. 674
He is the steamship agent.

Q. And he is bound to furnish cargo? A. Yes.

Q. And he is liable if there is demurrage? A. He is liable.

Re-Direct by Mr. Convers:

Q. Have you ever seen this contract between Florio and the owners? A. No.

Q. Then you have no personal knowledge of it? 675
A. No.

By Mr. Reed:

Q. That is the custom? A. That is the custom.

Q. That is the custom throughout the world generally? A. Well, that is the custom with us.

By Mr. Convers:

Q. Do you know of any agreement between Florio and the owners of the *Abbazia* that would require Florio to pay demurrage for not loading your vessel 676
within a certain number of days? A. No, I do not know whether there is any agreement between them.

Re-Cross by Mr. Regensburger:

Q. I understand you to say, captain, that Floric had a contract with your company to send a certain amount of cargo every time the vessel leaves Girgenti? A. No, not Girgenti; all over Sicily—consisting of sulphur and fruits.

677 Q. And he has either to send cargo or pay for the delay? A. Yes, if he doesn't give the cargo he has got to pay.

By Mr. Convers:

Q. Do you mean that he must give a certain quantity of cargo in a certain time, or that he simply agrees that the vessel shall receive a full cargo? A. What I
678 know is—I had instructions that each captain of each ship—that coming in Sicily we must load so much sulphur and so many fruits, and if we have not so much sulphur and so many fruits then we protest against Florio, and then they settle between themselves.

Q. And that is what you mean by what you have said when you said that Florio was liable to your owners for demurrage? A. Yes.

By Mr. Hill:

679 Q. Isn't it the universal custom everywhere that the person who is bound to furnish a cargo is liable for demurrage if there is delay in furnishing the cargo—if he holds the ship? A. Where?

Q. All over the world? A. In Sicily.

Q. In Sicily, yes. A. In Sicily it is with our company so, because it is a private contract with him; it is something private.

Q. But if the shipper holds the ship, delays it, because the cargo is not ready, then he pays demurrage, doesn't he? A. He must pay the ship, then.

680 Q. And the shipper in the case of your vessels is Florio? A. He pays to Florio.

Q. As between your company—— A. (Interrupting) and the shippers.

Q. And the shipper Florio is the man they look to? A. Yes.

Q. Your company looks to Florio? A. Florio; always; he is the agent.

By Mr. Convers:

Q. You mean that your company looks to Florio to

carry out their instructions as to loading? A. Their business. He has all the owner's business in Sicily; he is the general agent. 681

Q. And do you mean to be understood as saying that Florio is liable to your owners if he does not load your ship within a certain time—commence loading? A. Because my owners don't know what the ship is doing—what the shippers are doing; the owners don't know what the shippers are doing. 682

By Mr. Reed:

Q. How long would you wait for a cargo if one did not turn up there? A. Girgenti?

Q. Yes. A. I arrived on Wednesday and started loading on Monday.

Q. How long would you wait generally, supposing no cargo turned up? A. They send us away. They send us to other ports in Sicily to take fruits, &c.

Q. Who does, Florio? A. Florio, the agent. 683

By Mr. Regensburger:

Q. You did not issue any bill of lading for any of this sulphur, did you? A. No.

Q. Why was it that you did not issue any bill of lading to any one for this brimstone? A. Because they have been made before by the captain of the *Styria*. I brought the *Styria's* cargo. I knew what the bill of lading was to be. Another copy was to my lawyer; I suppose he sent it to my owner.

Q. Captain, when you discharge this brimstone you take it up in buckets, and then discharge it in the lighter through a buffer, don't you? A. Where, in Girgenti? 684

Q. No; here in New York? A. No. They take it in large buckets, and they discharge through a chute.

Q. Where is it weighed? A. It is weighed on board.

By Mr. Convers:

Q. The sulphur was weighed on the deck of the ves-

685 sel by the consignees when you discharged at New York? A. Yes.

Q. The lighters were the consignees' lighters, employed by them, and sent there for the brimstone, were they not? A. Yes.

Q. The lighters were not employed by the ship? A. No.

Q. Here in New York? A. No.

686 Q. And did these appliances by which the cargo was put aboard the lighters in New York belong to, or were they controlled by, the receivers of the cargo, or were they the ships? A. The stevedores and the receivers of the cargo.

By Mr. Regensburger:

Q. The weight taken by the owner is checked by your chief mate, isn't it—the weight is checked off by your chief mate? A. No.

687 Q. Don't you check the weight? A. No; only the consignees. It may be checked by the agent—

Q. Not by the ship? A. No. We don't check it.

Q. How do you know they deliver the full cargo? A. It is the consignees' weight.

Q. You don't check it? A. We don't check it.

Deposition of Henry De Trianich, recalled by consent for further cross-examination, taken at No. 5 688 Beekman street, New York, October 10, 1898:

By Mr. Reed:

Q. Captain, have you the statement of your disbursements in your hands which you presented here the other day? A. Yes.

Q. Will you please look at the first item, towage. Have you the vouchers for that disbursement—the receipted bill? A. This is the bill I had (Referring to Exhibit 7 for ident.). We took on board a copy, and the other copy was sent to the owner.

689

Q. That paper is the general account which you presented here the other day? A. Yes.

Q. But that is not the account rendered to you by the people who did the towage, is it? A. No.

Q. Have you that statement? A. No.

Q. Did you personally make these disbursements which are in this account? A. I signed the draft for them.

690

By Mr. Regensburger:

Q. Signed a draft for how much? A. For the total amount of the expenses.

By Mr. Reed:

Q. For the total amount of the expenses? A. Not for those expenses exactly, but for the total amount of the expenses I had for my stay in Girgenti, and for cargo expenses, and some other expenses—my private expenses. But the accounts signed by me are in the owner's hands.

691

Mr. Convers: We have sent for them, and will get them. They are not here.

Q. Now, taking that item of 42 lira and 60 c., customs over time, I should be glad if you will tell me again what that disbursement is? A. It is the custom of the port for people to work there till one destinated —fixed hours; and sometimes we are obliged to work about half an hour extra, you see, to finish one or two lighters that are alongside the ship, and for the permission to load over the fixed hours we have to pay about six lira per day to the Custom House.

692

Q. And that is this charged? A. That is the 7 days —42 lira, 60c.

Q. Did the lawyer for whose benefit you deposited that 1,000 lira render you a bill for the services? A. The lawyer's fees?

Q. The 1,000 lira? A. The account of the lawyer was about 1,946 lira.

Mr. Regensburger: We want to know whether he rendered him a bill.

693 Henry De Thianich.

WITNESS: The lawyer rendered an account for 1,900 and some odd lira. I sent the bill on; I have no bills with me.

Q. You have not the bill? A. No. I have no bills at all.

MR. CONVERS: We will produce any bill that the owners have.

694 Q. Did that bill describe what services he had rendered? A. Yes—all detailed.

Q. How much of a bill was it? A. For every shipper a separate bill.

Q. And did he render a long statement of the services which he had rendered? Do you remember whether it was a long bill or a short bill? A. Oh, it was a long bill.

Q. Captain, if you will look at your testimony on
695 page 12 (testimony shown witness), you will find, with reference to that 1,000 lira item, this statement: "He" (meaning your lawyer) "got about 900 lira advance from the manager of the ship." A. Yes.

Q. That is the item of 900 lira referred to on page 13, is it not, and which also appears in the statement as 900 lira? A. Yes.

Q. That is the same item, is it not? A. That is the same.

Q. And you did not pay him that? A. The 1,000?
Q. No, the 900? A. No, he got that from the
696 owners.

Q. You personally had nothing to do with that payment? A. No.

Q. I forget whether you said that Signor La Loggia was the same lawyer as the one to whom the 900 lira were paid? A. The same.

Q. May I ask you, once for all, have you any of the vouchers, or any of the bills, for any of these items here with you?

Mr. Convers: Except what bills I have produced and offered in evidence?

Mr. Reed: Yes.

A. I can produce only the bill for the port charges—anchorage fees; this is the only one; but I can't leave it here, because, when the ship comes to Italy, for his anchorage fees he pays so much per ton—if he stays one time my ship must pay 2,000 and so many lira; generally we pay in full for one year; that makes the bill—my bill is for about 9,000 lira; but I can't charge for 9,000 lira, when for only one stay of the ship we must pay two thousand and something.

Q. That is the way, then, that you have apportioned this charge of 9,000? A. That is the custom of the port. Yes.

Mr. Convers: I understand he has apportioned it for the lowest period for which he has made a payment.

By Mr. Regensburger:

Q. You do it on the theory of four trips a year? A. Yes. But, if the ship comes there once and stays twenty days, or fifty days, or one full month, he must pay the same charges.

Q. Captain, you made four trips that year—for the year? A. This is my first trip. But I just paid now, you see.

Q. How do you mean you just paid now? A. When the ship comes in Italy——

Q. I don't care about that. You made four trips, didn't you, for the fiscal year? A. No. This is my first trip. The payment is made from this day to another day, you see, for one year; and this is my first trip; I paid this just now; I began; and before the end of my year I will make perhaps four trips. If I don't make four trips, the ship losses the difference.

Q. Suppose you make five trips? A. I must pay.

701 Q. You must pay? A. New anchorage fees.

Q. It includes four trips? A. It includes it in one year. In one year, I can't have more than four.

Q. Suppose you make five trips? Do you have to pay the same? A. I have to pay more—extra—2,000 and so much more.

Q. And that you pay, whether you get a cargo or not? A. Get it or not. That is the anchorage fees—
702 so much a ton.

By Mr. Reed:

Q. This one was the first trip of the four? A. This one was the first trip of the year.

Q. Can you give me from recollection, referring to the bill for telegrams, expenses, travelling, &c., the items of that bill, amounting to 355 lira? A. The receipts for the telegrams, you can get them from the owner; but the receipts for the travelling expenses, I have none, of course.

703 Q Can you tell me from recollection to whom these various telegrams were sent and the various amounts of these telegrams—the amount paid for each telegram? A. I should not be able to recollect how much I paid for each telegram.

Q. Have you a memorandum of those disbursements that you made? Did you keep a little book in which you put down the disbursement that you made? A. No. I had the receipts from the telegram, and then the receipts will be sent to the owner, because the
704 owner himself wants to make out how the amount comes out, you see.

Q. And you have no recollection of the particulars of these items? A. No.

Q. With reference to the item of 638 lira for stevedore, do you recall who the people were to whom you paid the money? A. I paid it to the agent, and the agent paid it to the people that work there. These were his fees according to the custom of the port. You pay 30c. per ton.

Q. You simply paid it to the agent? A. I signed to the agent, and he paid it. 705

By Mr. Regensburger:

Q. This port charge entitles you to load in any port in Sicily? A. What do you mean?

Q. This 9,000 lira payment entitles you to load at any Sicilian port whatsoever? A. At any Sicilian—or Italian ports too.

Q. Any Sicilian or Italian ports? A. For all the kingdom. 706

Q. The whole kingdom? A. Yes.

By Mr. Reed:

Q. Going back a minute to the bill for telegrams and travelling expenses, some were expenses of other persons than yourself, were they not—the agent of the ship? A. For myself and for the agent—my telegrams, and the agent's telegrams to the different shippers, to the general agent, and for the manager. 707

By Mr. Regensburger:

Q. How much was your freight earned other than for sulphur on this trip? A. The Trieste cargo, you mean, or——?

Q. The Trieste and the fruit cargo? A. We had no fruit. We had only a little quantity of Trieste cargo. I can't tell you the freight.

By Mr. Hill:

Q. You said you took on a few nuts, I believe? A. At Girgenti, almonds, 20 tons of almonds. That was loaded in Girgenti, 20 tons at about 20 shillings per ton. 708

By Mr. Rensburger:

Q. Could you have taken more freight than you did on your passage over; did you have room for more freight on your passage over? A. No.

Q. You didn't get more freight, then? A. No.

709 Q. Did you try to get more freight? A. No, there was none to get.

Q. None to get? A. No sulphur and no almonds. We took all there was there.

By Mr. Hill:

Q. That question of freight, as I understand it, does not concern the owners—it concerns Florio? A. The owners take a separate contract with Florio. The
710 owners are obliged to send so many ships during one year of the contract, and then Florio loads them, and he must take so much cargo; if we have not so much cargo, then we protest for short cargo.

By Mr. Regensburger:

Q. Did you protest this time for short cargo? A. No; but this time was not the same, because this time——

Q. Did you protest this time for short cargo? A. I
711 did not for short cargo, no.

By Mr. Hill:

Q. The fact is that, except your personal travelling expenses and the telegrams that you personally sent, you did not pay out any of this money yourself, but you simply signed a draft for the total amount upon Florio's statement of what he paid? A. Yes.

Q. All the payments to the persons who received these moneys were made by Florio? A. Yes.

712 Q. And not by you personally? A. Not by me personally.

By Mr. Convers:

Q. Why didn't you protest to Florio against short cargo of this vessel? A. No, I had not short cargo; I had my cargo.

Q. I ask you why you did not protest in this case? A. I had my cargo; I could not protest.

By Mr. Hill:

Q. I understand you to say that Florio was bound

to furnish a certain amount of freight—not the full capacity of the vessel, but a certain amount. A. Yes.

Q. And this time he did furnish as much? A. This time he had nothing to do with my steamer, because I went there, I mean, out of the contract, to take only the *Styria* cargo.

Q. This was a special trip? A. Yes; it was to take the *Styria's* cargo and bring it here. 714

Q. The *Styria* cargo was a cargo originally furnished through Florio, was it not? A. Yes.

Q. And so it was Florio's cargo all the same as if it had been a regular trip—it was a cargo through Florio all the same? A. Yes, to be taken by the *Styria*.

Q. Then to be taken by the *Styria?* A. Yes.

Q. And now your owners sent you on a special trip to take the cargo that the *Styria* did not take? A. Yes; and for this Florio cargo Florio was only to support me as agent always. 715

By Mr. Regensburger:

Q. Do you know whether the *Styria* carried a full cargo when she came over? A. When she came here?

Q. Yes. A. She carried a full cargo.

Q. She got that from Florio? A. Yes.

By Mr. Convers:

Q. Have you any personal knowledge of that? A. No. 716

By Mr. Hill:

Q. Just as you know a lot of things—just as anybody knows? A. Yes.

By Mr. Regensburger:

Q. What you mean to say is that this was not a special trip to Girgenti, but you know when you got to Girgenti you would get this special cargo?

717 MR. CONVERS: I object to the question. The captain said nothing of the kind. I object to the form of the question as assuming a statement made by the captain which he did not make.

MR. REGENSBURGER: I understood him to say that.

718 Q. Is that what you mean to say, captain? A. What?

Question repeated: That this was not a special trip to Girgenti, but you knew when you got to Girgenti you would get this special cargo? A. I do not say that. I said I went specially to Girgenti to take the *Styria* cargo. That is what I said.

By Mr. Hill:

Q. But it was on your regular trips? A. Yes, it was one of my regular trips coming to New York.

719 CLAIMANT RESTS.

LIBELLANTS' PROOF.

Counsel for Morgan *et al.* refers to the testimony of the Captain of the *Styria* on pages 27, 29, 31, 32, 35, 43, 45, 46, 60, 67-69, 79-82.

720 Counsel for Malcomson reads in evidence letter from Department of State dated August 8, 1898, to Sullivan & Cromwell, being No. 17 annexed to the stipulation *Styria's* Exhibit D heretofore referred to.

Objected to as immaterial and irrelevant.

(Marked Malcomson's Exhibit D 17.)

Counsel for Malcomson reads the enclosure, being No. 18 annexed to said stipulation.

Objected to as immaterial and irrelevant.

(Marked Malcomson's Exhibit D 18.)

Alfred S. Malcomson. 721

Counsel for Malcomson reads in evidence papers annexed to said stipulation Nos. 19 to 26, being translations of articles published in the Giornale de Sicily, which it is agreed the captain saw.

Same objection.

(Marked Malcomson's Exhibits D 19 to 26.)

722

ALFRED S. MALCOMSON, being duly sworn and examined as a witness for libellants, testified:

By Mr. Hill:

Q. You are the libellant in the case of Malcomson against the *Styria*? A. Yes.

Q. What is your business? A. Importer of chemicals and sulphur.

Q. You import considerable sulphur? A. Yes, sir.

Q. You imported this cargo on the *Styria*, which 723
was forwarded on the *Abbazia*? A. Yes, sir.

Q. At that time were you engaged in the importation of other cargoes of brimstone from Sicily? A. Yes.

Q. Do you know whether any vessel containing a cargo of brimstone sailed from Sicily between the 25th of April and the 7th of May?

Objected to as immaterial and irrelevant.

Q. Did you import any brimstone on the *Lord War-* 724
wick?

Same objection. Allowed.

A. Yes, sir.

Q. When did she arrive? A. If you will allow me to refer to my papers I can tell you.

Q. Was she a steamer? A. Yes.

Q. From where? A. Sailed from Palermo, Sicily, in the latter part of April; arrived in New York May 19th.

725 Alfred S. Malcomson.

Q. With her cargo safe and in good order?

Same objection and ruling.

A. I had 500 tons on her.

Q. And the brimstone was carried through and landed in New York?

Same objection and ruling.

A. Yes.

726 Q. Did you about that time receive any brimstone by the *City of Truro?*

Same objection and ruling.

A. Yes, sir.

Q. When did she arrive and how much did you have?

Same objection and ruling.

A. She arrived May 18th at New York.

727 Q. From where? A. Sailed from Licata, Sicily. We had 2,150 tons on her.

Q. That came through all right and was landed in New York?

Same objection and ruling.

A. Yes.

Q. Did you have any on the *Europa?*

Counsel for *Styria* objects to importations on
728 any of these vessels as immaterial and irrelevant. Allowed.

A. Yes, sir. She arrived on May 26th at Portland, Maine.

Q. From where? A. She sailed from Licata, Sicily. We had 2,500 tons on her. Licata is one of the brimstone ports.

Q. That came through all right and was landed in Portland?

Same objection and ruling.

A. Yes, sir.

Alfred S. Malcomson. 729

By Mr. Burlingham:

Q. Who were the agents of these different steamers in New York? A. Funch, Edye & Co. were agents for the *City of Truro;* Hirzel, Feltman & Co. agents of the *Lord Warwick* and the *Styria.*

Q. Did you have any brimstone on the *Pocahontas?*

Same objection and ruling.

A. No.

730

Q. Do you know when she arrived? A. Early in May.

Q. Who were her agents? A. I can't tell you; Phelps Brothers, I think.

Mr. Burlingham: I have a letter here from Phelps Brothers, which Mr. Kirlin objects to.

Libellants Rest.

731

Counsel for *Styria* offers in evidence letters and documents marked "1 to 16" inclusive, attached to stipulation *Styria's* Exhibit D heretofore referred to.

Counsel for Malcomson objects to their admission as totally beside the question.

Counsel for Morgan objects to any negotiations of Burrell & Son, managing owners of the *Styria.*

The Court: It is not a question of the efforts made by Burrell & Son. I will admit what is contemporaneous You may put in all such inquiries and answers up to the time when the vessel left Sicily. 732

Counsel for *Styria* offers the said papers in evidence separately as follows:

No. 1. Dated May 9, from Burrell & Son to Foreign Office.

No. 2. Same date. Telegram in same terms to Secretary of British Embassy at Madrid.

No. 3. Telegram, May 10, from Madrid to Burrell.

733 No. 4. Telegram, May 10, from Foreign Office to London to Burrell.

No. 5. May 12. To Under Secretary of State by Burrell.

No. 6. May 12, from Foreign Office to Burrell.

No. 7. June 4, from Burrell & Son to Foreign Office.

No. 8. Telegram Burrell to British Embassy.

No. 9. Telegram, June 5, from Wolffe, Am-
734 bassador at Madrid, to Burrell.

No. 10. Letter from same to same.

No. 11. Telegram from Foreign Office.

No. 12. June 6, letter from Foreign Office to Burrell.

No. 13. July 1, Letter from Villiers, Under Secretary of Foreign Affairs, to Burrell.

No. 14. July 2. Inquiry on behalf of owners.

No. 15. July 8. From Foreign Office to Burrell.

735 No. 16. July 13. From Foreign Office.

Marked "*Styria's* Exhibits D 1 to D 14" inclusive.

Adjourned.

NEW YORK, February 16, 1899,

Met pursuant to adjournment.

Counsel for Malcomson offers in evidence statement
736 showing difference between export cost and proceeds of sale of brimstone belonging to libellant Malcomson, showing freight paid $2,182.56.

Objected to as immaterial and irrelevant.
(Marked Malcomson's Exhibit "H.")

Counsel for Parsons offers in evidence a similar statement on behalf of libellant Parsons, showing gross proceeds $7,402; freight paid $528; weighing $112.88.

Same objection.
(Marked Parsons' Exhibit "I."

Counsel for Munroe offers in evidence a similar statement on behalf of libellant Munroe showing sale of 92½ tons at $20.50 a ton; gross proceeds about $2,000. 737

Same objection.

(Marked Munroe's Exhibit "J."

It is agreed that the proceeds of sale of the Morgan sale was $4,513.46, being 243 tons and 2,174 pounds at $18.50 a ton; charges for freight $354.98, weighing $24.40. 738

COUNSEL FOR ALL PARTIES REST.

Claimant's Exhibits 1, 2, 3, 3a, 4 and 4a, being the bills of lading for the consignments of Morgan, Munroe, Parsons and Malcomson, shipped as alleged in the libels, all containing the same terms, exceptions and conditions, and being in the same form as Claimant's Exhibit 5, are omitted from the printed record by consent, claimant having the right to refer to said Claimant's Exhibit 5 for the terms, conditions and exceptions of the other bills of lading. 739

Marked Claimant's Exhibit 5 for identification June 8, 1898.—E. H. C. Sten.

Shipped in apparent good order and condition, by .....in and upon the steamship 740
called the.....whereof.....
is master for this present voyage and now lying in the port of.....and bound for.....
with liberty to call at any port or ports, in any rotation, in the Mediterranean, Adriatic and adjacent seas, or on the coasts of Spain or Portugal or in the Azores, or in North America, for the purpose of receiving and delivering coals, cargo or passengers, or for any other purpose whatsoever; to sail with or without pilots; to tow and Assist Vessels in all situations, although dev-

741 iating thereby from the voyage, and to carry Goods of all kinds, dangerous or otherwise, and with liberty to tranship any part of the cargo by steamer.

Said to be marked and numbered as per margin and to be delivered from the Ship's Deck, where the Ship's responsibility shall cease, in the like good order and condition, at the aforesaid Port of..... .. or so near thereunto as she may safely get the Act of God, The Queen s Enemies, Pirates, Robbers by land or sea, Jettison, Thieves, Vermin, Barratry of
742 Master or Mariners, Restraints of Princes and Rulers or People, Loss or damage resulting from any of the following perils, whether arising from the negligence, default, or error in judgment of the Pilot, Master, Mariners, Engineers, Stevedore, or other Persons in the service of the ship or any other ship belonging to or sailing under the flag of the company or otherwise, namely: Risk of Lighterage to or from the vessel, or of Craft or Hulk or Transhipment, Explosion, Heat, or Fire at sea, in Craft or Hulk, or on Shore, Bursting
743 of Boilers, Unseaworthiness arising from Breakage of Shafts or any latent defect in Hull, Machinery, or Appartenances, or free from the consequences of any damage or injury thereto, howsoever such damage or injury may be cansed, Collision, Stranding, Straining, or other perils of the seas, Rivers, Navigation, or Land Transit of whatever nature or kind soever and howsoever caused, excepted, with liberty (in event of Steamer putting back to this or into any other port or otherwise being prevented from any cause from com-
744 mencing or proceeding in the ordinary course of her voyage) to ship or tranship the Goods by any other steamer, and with liberty to proceed, under sail, or in tow of any other manner which the Ship's owner may deem fit, unto.

or to his or their Assign, he or they paying freight. the shipper also remaining liable for the same, for the entire quantity of goods therein enumerated, whether delivered sound or unsound, in cash, free of interest, on the Ships delivery, at and after the rate of

..... Shillings and..... ... 745
Pence British sterling per..... .....
with per cent. primage and average accustomed; or the equivalent thereof, payable in cash, without discount, at the rate of exchange current on the day of the Ships arrival for Banker's sight bills on London. Any average that may arise on the voyage to be adjusted according to York and Antwerp Rules.—Weight, Measurement, Gauge, Contents, Quantity, Quality Condition Brand and Value unknown and not accountable for loss or damage result- 746
ing from stowage, sweating, leakage, breakage, pilferage, wastage, rust, decay, rain, spray frost, thaw, effect of climate or heat of hold, bursting of bags, damage by rats, deterioration in quality, defects, slightness or insufficiency of packages, contact with or smell or evaporation, from any other goods, nor for incorrect delivery of goods, arising from inaccurracies, obliteration, insufficency or absence of marks, or numbers, or from any such being incorrectly stated in this bill of lading, or injury to wrappers how- 747
ever caused.

If said goods be of a perishable nature, such as green fruit, the consignee, his agents or assigns shall claim the same and pay the freight thereon within forty-eight hours after the same is ready for delivery, and in default thereof the charterers or their assigns may, at their option, sell such goods at public auction for account and risk of whom it may concern, and apply the proceeds of such sale as follows: To pay the expenses of such sale and all freight, custom dues, and 748
other charges properly chargeable to said goods, and to hold the overplus, if any, for account of whom it may concern, and if said proceeds shall not be sufficient to pay said freight, expenses, duty and other charges, such sale shall not prejudice the rights of the charterers to enforce collection of the remainder. Goods will be held free of charge for primage for five days from entry of steamer at Custom House. A charge for Primage of one-third (1/3) of one per cent. per Box per day will be collected for each box, for

749 every day held thereafter until and including the day of delivery. Not accountable for loss or damage, caused by heating machinery, if any, or connection thereof on Dock, where goods shall be discharged.

All fines, expenses, losses or damage which the Shipowner, or his agents, or servants, or the ship, or cargo may incur or suffer on accounnt of incorrect or insufficient marking of the packages or description of their contents, or the dangerous nature of such contents shall be paid by the Shipper or Consignee, as may
750 be required, and the Shipowner shall have a lien upon the goods for the payment thereof.

Simultaneously with the ship being ready to unload, the above-mentioned goods or any part thereof the Consignee of the said goods is hereby bound to be ready, to receive the same from the ship's side, either on the Wharf or Quay at which the ship may lie for discharge, or into Lighters provided with a sufficient number of men to receive and stow the said goods therein, and in default thereof, the Master or Agent of
751 the ship, and the Collector of above port are hereby authorized to enter the said goods at the Custom house, and land, warehouse, or place them in Lighters without notice to, and at the risk and expense of the said Consignee of the goods after they leave the Deck of the Ship, the Collector of the port of Discharge being hereby authorized to grant a general order for discharge immediately after entry of the ship.

The captain or owner has a lien on the goods for unpaid freights, through freights, average claims, or
752 liabilities incurred in respect of any charges stipulated herein, to be borne by the owners of the goods. Freight on Perishable Goods to be paid by the Shipper or Consignee, in whatever condition they may be delivered, if payable by shippers, in due in full in exchange for bill of lading and to be considered as earned, ship lost or not lost, and if payable by Consignee on arrival of goods at place of destination, in exchange for delivery order, settlement in either case to be made without discount or abatement. Freight on goods to

order, liquids and brittle or perishable goods, payable 753
by Shippers if required.

The Shipowner is not to be liable for any damage to any Goods which are capable of being covered by insurance, nor for any claim, notice of which is not given before the removal of the goods, nor for claim for damage or detention to goods under Through Bills of Lading where the damage is done or detention occurs whilst the goods are not in the possession of the Shipowner, nor in any case for more than the invoice or declared value of the goods, whichever shall 754
be the least. Not accountable to any extent for gold or silver, manufactured or unmanufactured; or in shape of coin, plated articles, glass, china, jewelery, precious stones, trinkets, nor for any other highly valued goods, unless the value be herein expressed and extra freight as may be agreed on be paid.

The only condition on which glass will be carried is that the Shipowner will not be held liable for any breakage which may occur, however caused.

Shippers will be held accountable for all damage 755
caused by goods of an inflammable, explosive or otherwise dangerous character, shipped without permission or without full disclosure of their nature, whether such shippers shall be aware thereof or not, and whether such shippers shall be Principals or Agents only, and such goods may be seized and confiscated or destroyed by the shipowner at any time before delivery, without any compensation to the Shipper or Consignee.

This Bill of Lading, duly endorsed, to be given in 756
exchange for delivery order.

In case of Blockade or interdict of the Port of Discharge, or if, without such blockade or interdict, the Master shall consider it unsafe for any reason, to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe at Shipper's risk and expense, and on the goods being placed in charge of any Mercantile Agent, or of British Consul, and a letter being put into the post office, addressed to the shipper and Consignee, if

757 named, stating the landing and with whom deposited, the goods to be at the Shipper's risk and expense and the Master and Owners discharged from all responsibility.

In event of Quarantine, the goods to be discharged on arrival into Quarantine Depot, Hulk, Lighter, or other vessel necessary for the ship's despatch, at the Consignee's risk and expense; or should this be impracticable or the vessel not admitted, or should communication subject the Steamer to Quarantine at a
758 subsequent port of call, the Master to have the option, and is hereby authorized to land the cargo, at the nearest safe port to which the vessel is bound, at the risk and expense of the Consignee; and on the goods being placed in charge of any Mercantile Agent, or of the British Consulate, a letter being put into the Post office, addressed to the shipper and consignee, if named, stating the landing, and with whom deposited, the goods to be at the Shipper's risk and expense, and the Master and Owners discharged from all responsi-
759 bility.

Notice.—In accepting this bill of lading, the Shipper or other Agent of the property carried, expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

In witness whereof the Master or Agent of the said Ship hath affirmed to Bill of Lading all of this tenor and date, the one of which bill being accomplished, the others to stand void.

760 Not accountable for wrong marks or numbers.

Dated in.....this.....18....

With liberty either before or after proceeding towards the port of discharge, to proceed to and stay at, any ports or places whatsoever (although in a contrary direction to, or out of or beyond, the route to the said port of discharge), once or oftener, in any order, backwards or forwards for loading or discharging cargo or passengers, or for any other purpose whatsoever, and all such ports and places, and sailings shall be deemed

included within the intended voyage. This liberty is not to be considered as restricted by any words in this contract, whether written or printed. 761

Said to be marked as per margin, it is specially stipulated that no claim is to be made by the Shipper or receiver for any loss arising from difference in marks or contents.

If during the Winter Season the within mentioned goods are discharged at a dock fitted with heating machinery a charge of 1/3 of one cent (United States currency) per box per day will be levied upon all boxes (accidents to machinery, etc., always excepted). 762

I. & V. Florio.

PALERMO.

(Flag)

Transoceanic Line,

William J. Peirce,
Agent,
Girgenti—Porto Empedocle.

Freight Ls..... 763

....

Claimant's Ex. 6—Mongan, June 8/98.

Porto Empedocle, 27th 4, 1898.

Signori John Sofio & Co.,
Messina:

Ritenendo Rischioso il mio viaggio per Nuova York coll' attuale carico zolfo per fatti di Guerra vi prevendo che scarico qui la vostra merce per vostro conto e rischio sontto cura dell' Agente mercantile Signor William Peirce depositandola nei magazzini del Signor Lenobio Urso gin e sequesti non fossero sufficienti nei magazzini di cotesto consolato Inglese faccolta che tengo in forza delle polizzi di carico. 764

Graditi i mici piu cordiali saluti,

Antonio Scopinich,
Capitano del Piroscaso
Styria.

765 Claimant's Exhibit 7, Malcomson, and Claimant's Exhibit 8, Baller, bear the same date and are in the same form as the foregoing, except that they are addressed respectively to the Canadian Bank of Commerce and Ferdinando Baller & Co. They are therefore omitted by consent. Claimant's Exhibit 9, the translation of the foregoing appears in the deposition of Scopinich at page 142.

Claimant's Exhibit 10, letter sent to Austrian Consul (translation) appears in the deposition of Scopinich at
766 page 142.

Claimant's Exhibit 11, (translation) letter sent to director general of customs appears in the deposition of Scopinich at page 145.

Claimant's Ex 12.

Porto Empedocle, 7 Maggio '98.

767 Egregi Signori:

Fo seguito alla mia 27 p. p. comunicaudovi che la partita Zolfo da voi caricata a bordo il Vapore Austriaco *Styria* per New York, trovasi a vostio rischio e spesl nei magazzini del Signor Zenobio Urso, qui, e tostochi mi rimborserete le spesl qui fatte per vostro conto in conformita della Polizza di carico, il detto zolfo vi sara conseguato.

Vi saluto distintamente

Antonio G. Scopinich,

768 Comandante il Vapore,

Austriaco *Styria*.

Addressed

Vi Signori

J. Sofio & Co.,

Messina.

Claimant's Ex. 13 bears the same date and is in the same form as the foregoing except that it is addressed to Ferdinando Baller & Co. It is therefore omitted by consent.

Claimant's Exhibits 14 and 15, being translations of 769
Claimant's Exhibits 12 and 13 appear in the deposition of Scopinich at page 148.

Claimant's Exhibit 16 is the same as Parsons' Exhibit F 6, February 14, 1899, and is printed at page 337 of the record.

Styria's Exhibit A.—Translation Protest Sofio— 770
Morgan.

In the year eighteen hundred and ninety-eight, on the 2nd of May, in Porto Empedocle.

At request of Messrs. John Sofio & Co., of Messina, as representatives of Messrs. James L. Morgan & Co., of New York, in their interest and anybody elses whom it may concern.

I have declared to the captain, A. G. Scopinich, of the Austro-Hungarian steamship *Styria*, now anchored 771
in this port, that,

As captain loaded on the 23d of April last for a/c and in the interest of above mentioned firm the quantity of two hundred and fifty tons of sulphur into his ship, as per freight contract, and as above captain discharged and deposited the mentioned quantity of sulphur in this Porto Empedocle, which has as consequences great damage to the interest of petitioners and whom they represent, they protest through me against Captain Scopinich and against his owners, holding them responsible for all damages, expenses, loss of in- 772
terest and profits and damages that can be attributed to their action and over which if necessary the magistrate will decide.

The present copy signed by me has been notified to above Captain Scopinich on board of his steamer, and was handed by me over to him personally at a quarter past four. Cost as in original, £11 3 0.

(Signed) GIRLANDO SCHANBRI.

773 **Styria's Exhibit B.**—Answer of Master—Translation.

In the year eighteen hundred and ninety eight, 17th of May, in Messina. At request of Mr. Antonio Girolamo Scopinich, captain of the Austro-Hungarian steamship *Styria*, which already anchored in Porto Empedocle, and now on her voyage.

I, the undersigned clerk to the civil tribunal of Messina, have notified, and with the present, give an iden-
774 tical copy to Messrs. John Sofio & Co. here, with all due respect which can be shown to them of the superior ricourse and relative decree of the Praetor in Girgenti, with which petitioner is authorized to proceed with the sequestration of the sulphur in question.

And this is to be known and for every effect of the law.

And I also notified to them that same had been executed in Porto Empedocle under the clerk, Travali, on the 8th inst.

775 At the same time and at the same request I have summoned the mentioned firm to appear before the civil tribunal of Girgenti, for the sitting of the twenty-first of June, at the legal hour, in the usual locality, to listen to the judgment of the following questions:

Considering the above mentioned facts in the superior ricourse.

Considering the decree of which the above is the equestration.

Considering the right of the tribunal of Girgenti to
776 decide with reference to the action.

Considering that as per law and agreement the discharging expenses have to be reimbursed by shipper, who has also to pay the store rent.

Considering everything else

It may please the Tribunal to confirm the sequestration as per foregoing sentence, the mentioned firm to pay to Pursuer the sum of one thousand eight hundred lire, being amount of expenses incurred in discharging the cargo, also to pay the store rent in which the sul-

phur has been deposited, viz., one per cent. per year 777
or fraction of year.

Sentence them to pay the expenses of the sequestration and of this judgment; order the sale of the sulphur sequestrated handing over to Pursuer the sum so far as to cover his credit for expenses incurred; order the provisorial execution of the sentence with reserve of other and more important rights.

For Pursuer will act Advocate Enrico La Loggia, legal procurator, practicing with his collegs of Girgenti. 778

Copy of this present act, and of the above mentioned ricourse and decree, signed by myself, was taken by me to the address of Messrs. John Sosio & Co., handing same over to a person in their employ capable of receiving same, as I could not find personally the representative of above firm.

(Signed) ANTONIO ALLEGRO.

Styria Exhibit B 1.—Answer of Master—Translation. 779

In the year eighteen hundred and ninety-eight, on the fifth of May, in Messina.

At request of Mr. Antonio Scopinich, qual capitano of the SS. *Styria* of Austrian flag, now anchored in Porto Empedocle,

I, the undersigned clerk to the civil Tribunal of where I reside, have declared to Messrs. John Sofiio & Co. of Messina, with all due respect, that Petitioner 780
rejects the protest intimated to him on the 30th of April through the clerk, Giovanni Marrione. Petitioner in discharging cargo preceeded as was his right and in the interest of the goods. This is confirmed by the fact published in the papers and discussed in the Italian parliament, that sulphur had been declared contraband of war by one of the fighting nations.

As per law and agreement with petitioner, the sulphur was discharged for a/c and risk of shippers except their relations with consignees.

781 Petitioner in the meantime protest against all delay, expenses and damages which they may suffer through the obstinacy of Messrs. John Sosio & Co., and asks them to reimburse all expenses of discharge, etc.

This good for any effect of the law.

Copy of this act signed by me has been taken to the address of Messrs. John Sosio & Co., and I handed it over to a person of their employ capable of receiving same.

(Signed) ANTONIO ALLEGRO.

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Styria's Ex. C.—Stipulation as to Shipment of Sulphur.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

MALCOMSON *et al.*
AGAINST
The Steamship STYRIA, etc.

786

MORGAN *et al.*
AGAINST
The Same.

PARSONS *et al.*
AGAINST
The Same.

787

MUNROE *et al.*
AGAINST
The Same.

It is stipulated and agreed between the parties as follows:

788

1. The claimant shall forward the cargo landed ex *Styria* at Port Empedocle, on the first available steamer from that port to New York, and shall deliver the same to the consignees, upon the terms and for the freight specified in the original bills of lading, the consignees to receive the same and to pay the agreed freight on right and true delivery; the goods upon arrival to be sold at current market rates and the proceeds, less charges incurred, to be credited on account

789 of the damages, if any, recovered in these cases by the libellants.

2. The claimant shall have a lien on the portions of the cargo to be delivered to the several libellants for the respective amounts of the charges against the respective portions of the brimstone in Sicily, provided the claimant was justified in relanding and storing the cargo at Port Empedocle as and when he did. If it be held that the relanding and storage of the cargo was
790 not justified, then the said brimstone shall be free from any lien on account of the aforesaid charges or expenses, except freight, which is provided for in paragraph first of this stipulation.

It is the purpose and intent of this paragraph of the stipulation to provide that if the claimant was justified in relanding and storing the cargo as and when he did, he shall have a lien upon the respective consignments for their respective proportions of the charges and expenses against the same, which the libellants would
791 have had to pay (exclusive of the charges provided for in the first paragraph of this stipulation), if they undertook to forward the cargo for their own account.

3. This stipulation and anything done by any party under it shall be deemed to be wholly without prejudice in the pending suits, except as herein provided.

New York, August 12th, 1898.

Sullivan & Cromwell,
Proctors for Malcomson *et al.*

792 Cowen, Wing, Putnam & Burlingham,
Proctors for Morgan *et al.*

Bowers & Sands,
Proctors for Parsons *et al.*

Stern & Rushmore,
Proctors for Munroe *et al.*

Convers & Kirlin,
Proctors for S.S. *Styria.*

Styria's Ex. D.—Stipulation as to reading of documents on trial, with 26 documents annexed. 793

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN *et al.*

AGAINST

The Steamship *Styria*. 794

SCHUYLER L. PARSONS

AGAINST

The Same.

ALFRED S. MALCOMSON

AGAINST

The Same. 795

JOHN MUNROE & COMPANY

AGAINST

The Same.

AUSTRO-AMERICANA S. S. Co.

AGAINST

100 Tons Brimstone owned by JOHN MUNROE, *et al. ex Abbazia*. 796

The Same

AGAINST

3,250 Cantars of Brimstone, owned by JAMES L. MORGAN *et al. ex Abbazia*.

797 The Same

AGAINST

1,500 Tons Brimstone, owned by MALCOMSON *ex S. S. Abbazia.*

The Same

AGAINST

798 4,550 Cantars of Brimstone, owned by SCHUYLER L. PARSONS *ex Abbazia.*

It is hereby stipulated between the parties as follows:

(1.) That the claimant and cross-libellant may read upon the trial of these causes newspaper articles or items concerning the proclamation of war issued by the Queen Regent of Spain, dated April 23, 1898, from the Gaceta de Madrid, published April 24, 1898, and
799 the translation thereof published in the London Gazette of May 13, 1898 (pp. 2740, 2741); also newspaper articles or items concerning the proclamation of neutrality issued by the Queen of England, dated April 23, 1898, from the London Gazette of April 26, 1898 (pp. 2586, 2587, 2588).

(2.) That the claimant and cross-libellant may read upon the trial of these causes the annexed letters and telegrams, marked Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, which passed between the man-
800 aging owners of the *Styria*, the British Foreign Office and the British Embassy at Madrid, as appears by the respective documents, and that Miller & Son, Miller & Company, and the Secretary to the Newcastle Protection & Indemnity Association, who wrote and received certain of the letters, acted in the said managing owners' behalf.

(3.) That the libellants and cross-claimants may read upon the trial of these causes the annexed letters, marked Nos. 17 and 18, which passed between the rep-

resentatives of the libellants and the office of the Sec- 801
retary of State at Washington.

(4.) That any party may read upon the trial of these causes certain newspaper articles, of which translations are hereto annexed, numbered 19 to 26, inclusive, which appeared in the "Giornale di Sicilia," a newspaper published at Palermo, in issues Nos. 115, 117, 118, 120, 121, 123, 125, 127, dated respectively April 24–5, April 26–7, April 27–8, April 29–30, May 1–2, May 3–4, May 5–6, May, 7–8, and were read by the captain of 802
the *Styria*.

(5.) That any party may read upon the trial of these causes, from the bundle of documents marked "Protests and answers thereto" any protest served upon the master of the *Styria*, by or in behalf of any owner and shipper or any reply made by the master to any such protest.

(6.) That any and all documents read pursuant to this stipulation shall be subject to the objections of im- 803
materiality, irrelevancy and insufficiency.

(7.) That it is not the intention of any party to this stipulation to admit the existence or the accuracy of any matter of fact stated in any of the above mentioned documents or papers, but the Court is hereby authorized and empowered to draw such inferences of fact therefrom as may seem to it to be warranted.

Feb. 14, 1893.

SULLIVAN & CROMWELL,
Proctors for Malcomson, Libellant and Claimant. 804

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Morgan.

BOWERS & SANDS,
Proctors for Parsons.

STERN & RUSHMORE,
Proctors for Munroe.

CONVERS & KIRLIN,
Proctors for Clt. & Cross Lbt.

805

Styria Ex. D1.

No. 1.

COPY TELEGRAM.

9th May, 1898.

UNDER SECRETARY OF FOREIGN AFFAIRS,
Foreign Office,
London.

We manage line of steamers running Sicily to States.
806 Spain declared brimstone to be contraband, but it is now reported from Sicily that restriction removed at request of Italian Ministry. Is brimstone non-contraband and can any neutral vessel carry it to States. Kindly telegraph.

BURRELL, Shipowners,
54 George Sq.

807

Styria Ex. D2.

No. 2.

COPY TELEGEAM.

9th May, 1898.

SECRETARY,
British Embassy,
Madrid.

We manage line of steamers running Sicily to States. Spain declared brimstone to be contraband, but it is
8.8 now reported from Sicily that restriction removed at request of Italian Ministry. Is brimstone now non-contraband, and can any neutral vessel carry it to States. Kindly telegraph.

BURRELL, Shipper,
53 George Square.

Styria Ex. D3.

809

No. 3.

COPY TELEGRAM.

10th May, 1898.

BURRELL,
54 George Sq.
Glasgow.

Orders have been given not to treat sulphur for the present as contraband war.

810

SECRETARY OF BRITISH EMBASSY.

Styria Ex. D4.

No. 4.

COPY TELEGRAM.

10th May, 1898.

Messrs. BURRELL,
Shipowners,
54 George Square,
Glasgow.

811

Spanish Government state that decree already issued cannot be altered, but that as temporary measure Naval departments have been ordered not to treat sulphur as contraband of war, they lay stress on the fact that the measure is temporary only.

UNDER SEC'Y OF STATE, FOREIGN OFFICE.

812

813 **Styria Ex. D5.**

No. 5.

COPY TELEGRAM.

12th May, 1898.

UNDER SECRETARY OF STATE for
Foreign Affairs,
Foreign Office,
London.

814 Referring to your telegram to us of tenth inst. it is rumoured that Spanish Government yesterday declared sulphur non-contraband, kindly wire whether temporary relaxation you reported has been made permanent or still remains temporary.

BURRELL, Shipowners,
54 George Square.

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815 **Styria Ex. D6.**

No. 6.

COPY TELEGRAM.

12th May, 1898.

Messrs. BURRELL,
Shipowners,
54 George Square,
Glasgow.

816 Your telegram of to-day no later information received.

UNDER SECY. OF STATE,
Foreign Office.

Styria Ex. D7. 817

No. 7.

4th June, 1898.

UNDER SECRETARY OF STATE,
Foreign Office,
London.

DEAR SIR:

We have received the following telegram from correspondents in Sicily: 818

> "Spain notifies, Italy confirming, sulphur "temporarily not considered contraband. In- "structed Navy accordingly. (If) should later "decide suspension, previous notice will be "given, but steamers loading underway, or con- "contracted will be respected."

It would seem from the above that Spain has made a fresh notification regarding sulphur, and as the matter is of much moment to us, we would be glad if you 819 telegraph us saying whether the report is correct.

We are, Sir,
Your most obedient servants,
(Sgd) pro. BURRELL & SON,
ROBERT DUNCAN.

THE UNDER SECRETARY OF STATE
for Foreign Affairs,
Foreign Office,
London,
S. W. 820

821

Styria Ex. D8.

No. 8.

COPY TELEGRAM.

4th June, 1898.

SECRETARY
British Embassy,
Madrid.

We are informed that Spain notifies sulphur temporarily not considered contraband and has instructed
822 Navy accordingly. Should it later decide on suspension previous notice will be given fixing date, but steamers loading, underway, or contracted will be respected. Kindly telegraph whether this report correct.

BURRELL,
Shipowners.

Styria Ex. D9.

823

No. 9.

COPY TELEGRAM.

5th June, 1898.

BURRELL,
54 George Sq.,
Glasgow, Escocia.

Information in your telegram yesterday substantially correct am writing

WOLFF.

824

825

Styria Ex. D10.

No. 10.

MADRID, 5th June, 1898.

GENTLEMEN:

Referring to the Ambassador's telegram of to-day, I am directed by His Excellency to state to you that this Embassy are informed by the Ministry of State that the temporary suspension of the treatment of sulphur as contraband of war will not be revoked without notice, and that in case of revocation it would not affect 826
vessels at sea in ignorance of it, and time (plazo prudencial) would be given for the execution of pending contracts.

I am,

Gentleman,

Your obedient servant,

(Sgd) GEORGE BARCLAY,

Secretary at

H. M. EMBASSY.

MESSRS. BURRELL & Co., 827

54 George Square,

Glasgow.

Styria Ex. D11.

No. 11.

COPY TELEGRAM.

6th June. 1898. 828

BURRELL,

54 George Square,

Glasgow.

Report is substantly correct details by post.

UNDER SECRETARY OF STATE,

Foreign Office.

829

Styria Ex. D12.

No. 12.

Foreign Office, 6th June, 1898.

GENTLEMEN:

With reference to my telegram of this day's date, in reply to your letter of the 4th instant, I am directed by the Marquess of Salisbury to state to you that Sir Drummond Wolff, Her Majesty's Ambassador at Madrid, has been informed by the Spanish Minister for
830 Foreign Affairs that the treatment of Sulphur as contraband of war will be temporarily suspended, and that the order to that effect will not be revoked without notice.

The Minister added that eventual revocation of the order will not, in any case, apply to vessels at sea in ignorance of it, while the necessary time will be given for the execution of pending contracts.

I am,

Gentlemen,

831 Your most obedient humble servant,

(Signed) F. H. VILLIERS.

Messrs. BURRELL & SON,
54 George Square,
Glasgow.

Styria Ex. D 13.

832 No. 13.

(Foreign Office Seal)

FOREIGN OFFICE,
July 1st, 1898.

GENTLEMEN:

In reply to your letter of the 30th ultimo, I am directed by the Marquess of Salisbury to state that Her Majesty's Ambassador at Madrid has been informed by The Spanish Government that the treatment by them of Sulphur as Contraband of War will be temporarily suspended and that the order, which has been

given by them to that effect, will not be revoked without due notice. 833

His Excellency was also informed that the eventual revocation of the Order would not, in any case, apply to vessels at Sea in ignorance of it while the necessary time would be given for the execution of pending Contracts.

I am,
Gentlemen,
Your most obedient
humble servant, 834
F. H. Villiers.

Messrs. T. Miller and Son,
9, Great St. Helens,
E. C.

Styria Ex. D 14.

No. 14

Copy 835

9 Gt. St. Helens,
London, E. C.
2nd July, '98.

To the Under Secretary of State
(Treaty Department)
Foreign Office
Whitehall, S. W.

Sir

We have the honour to acknowledge receipt of your favor of yesterday's date, and are obliged to you for 836 the information contained therein.

We beg to point out that the information we desire is as to the notice given by the Spanish Government that Sulphur would not be treated as contraband of war. What notice was given of this and on what date?

We regret to give you this further trouble but the matter is of importance.

We have the honor to remain
Your humble obedient servants
(Signed) Thos. R. Miller & Son (Managers)

837

Styria Ex. D 15.

No. 15.

(Foreign Office
Seal)

FOREIGN OFFICE,
July 8th, 1898.

GENTLEMEN: [redacted]

In reply to your further enquiry of the 2nd instant, I am directed by the Marquess of Salisbury to state for
838 your information, that on the 6th of May last, as a result of representations made by Great Britain and Italy, the Spanish Minister for Foreign Affairs informed Her Majesty's Ambassador at Madrid—he having previously informed the Italian Ambassador to the same effect—that while the Decree of April 23rd, a copy of which is enclosed, could not be altered, orders would be given to the Naval Department, as a temporary measure, not to treat sulphur as contraband of war.

On the 31st of May the Spanish Minister addressed a
839 note on the subject to Her Majesty's Ambassador at Madrid the purport of which was communicated to you in my letter of the 1st instant.

The Secretary of State has no further information nor is he aware that any public announcement on the subject was issued in Spain.

I am,
Gentlemen,
Your most obedient, humble servant,
F. H. VILLIERS.

840 Messrs. MILLER & COMPANY,
United Kingdom Mutual Steamship
Assurance Association, Limited.

Styria Ex. D 16. 841

No. 16.

(Foreign Office Seal)

FOREIGN OFFICE,
July 13, 1898.

SIR:

In reply to your letter of the 5th instant, respecting the discharge at Girgenti of a cargo of sulphur from the steamship *Styria*, I am directed by the Marquess of Salisbury to state, for the information of the New- 842
castle Protection and Indemnity Association, that on the 6th of May last, as a result of representations made by Great Britain and Italy, the Spanish Minister for Foreign Affairs, who had previously informed the Italian Ambassador in the same sense, verbally stated to Her Majesty's Ambassador at Madrid that while the decree of April 23rd could not be altered, orders would be given to the Naval Departments, as a temporary measure, not to treat sulphur as contraband of war.

On the 31st of May the Spanish Minister stated in a 843
note to Her Majesty's Ambassador at Madrid that the treatment by Spain of sulphur as contraband of war would be temporarily suspended, and that the order which had been given to that effect would not be revoked without due notice.

His Excellency was also informed that the eventual revocation of the order would not, in any case, apply to vessels at sea in ignorance of it, while the necessary time would be given for the execution of pending contracts.

844

The modification of the Spanish intention in regard to the treatment of sulphur was not officially published in this country, but it is possible that some public announcement upon the subject may have been made in Spain or in Italy, although no information has reached Lord Salisbury to that effect.

I am,
Sir,
Your most obedient,
humble servant,
F. H. VILLIERS.

845 The Secretary,
to the Newcastle Protection
and Indemnity Association,
Newcastle on Tyne.

Malcomson Ex. D 17.

No. 17.

846 DEPARTMENT OF STATE,
WASHINGTON.

August 8, 1898.

L/J

Messrs. SULLIVAN and CROMWELL,
45 Wall Street,
New York City.

GENTLEMEN:

847 Referring to your letter of June 20th last, and to the Department's reply of June 22nd, I enclose herewith for your information a copy of a despatch from our Embassy at Rome, reporting that there was no formal agreement between Spain and Italy regarding the removal of sulphur from the list of articles contraband of war, and mentioning the dates connected with the Matter.

Respectfully yours,
(Sd) J. B. MOORE,
848 Assistant Secretary.

Enclosure:

From Embassy at Rome, No. 251, July 16, 1898.

Malcomson Ex. 18.

849

No. 18.

Copy. No. 251.

EMBASSY OF THE UNITED STATES,
ROME, ITALY,
July 16, 1898.

To Honorable
WILLIAM R. DAY,
Secretary of State,
Washington, D. C. 850

SIR:

Referring to your No. 206, of June 22, last, directing the Ambassador to obtain an official statement of the exact date of the agreement between Spain and Italy exempting sulphur from the list of articles contraband of war, and also the date of the official promulgation of the fact of the agreement in Italy, I beg leave to say that informal inquiries at the Foreign Office eliminated the following information: 851

1st. "The verbal communication made to the Royal Ambassador (at Madrid) concerning the orders given to the commanders of Spanish ships to respect sulphur, was made on April 29, 1898.

2nd. "The *Official* Note confirming the resolution to temporarily suspend, in regard to sulphur, the application of the Royal Decree of April 23, 1898, concerning articles contraband of war, was dated May 31, 1898.

3rd. "The Royal Ambassador at Madrid replied to 852
this note with a note dated June 3, accepting the notification of the declaration and decision of the Spanish Government, expressly reserving judgment, however, as to the principle involved."

There was apparently no "formal agreement" on the subject between the two Governments.

I have the honor to be,
Sir,
Your obedient servant,
LEWIS M. IDDINGS.

853

Malcomson Ex. D. 19.

No. 19.

(Translation.)

GIORNALE DI SICILIA.

No, 115, dated Palermo, Sunday, Monday, 24-25 Apl. 1898. *Is Brimstone Contraband of War?* Rome 24. The Messina Merchants (Boller) approached Mr. Picardi (Parliamentary Deputy for Messina) to urge
854 the Government to co-operate to exclude Brimstone from being considered contraband of war in the Spanish-American conflict. Mr. Picardi has been assured that Venesta (Minister for Foreign Affairs) will telegraph to our Ambassador in Madrid to obtain what is required from the Spanish Authorities. A reply is expected.

Malcomson Ex. D. 20.

855

No. 20.

No 117, dated Palermo, Tuesday, Wednesday, 26-27, Apl. 1898. *Brimstone Contraband of War.* L'Esercito (Newspaper) confirms that Spain includes Brimstone in the list of contraband of war. The Minister of War interested himself in the question, carrying same to the Council of Ministers, who decided to induce Spain to revoke its decision.

856

Malcomson Ex. D. 21.

No. 21.

No. 118, dated Palermo, Wednesday, Thursday, 27-28 Apl. 1898. *Is Brimstone Contraband of War?* Di Scarlia (Deputy) presents the following question, "the undersigned asks to be informed by the Minister of Foreign Affairs if Brimstone has been excluded from the list of contraband of war."

Malcomson Ex. D. 22.

No. 22.

No. 120, dated Palermo, Friday, Saturday, 29–30, April 1898. *The Question of Brimstone.* Rome 29. The Spanish Government has not yet pronounced itself upon the Italian demand to exclude Brimstone from the list of contraband of war. Yesterday our Ambassador renewed his insistance with Sagasta, who promised that a decision should be taken to-day, only the Minister of Marine seems decidedly averse to exclude Brimstone from contraband of war. It is hoped the Italian demand will be conceded.

Malcomson Ex. D23.

No. 23.

No. 121, dated Palermo, Sunday, Monday, 1–2 May, 1898. *Brimstone excluded from contraband of war.* Rome 1. Altho' the official advice has not yet arrived I assure you absolutely, that the Spanish Government has determined to exclude Brimstone from the list of contraband of war. The "Popolo Romana," confirming my information, says that the relative decree is imminent which has been provoked by the insistence of our Ambassador in Madrid, who obtained from Sagasta that he should unite the Council of Ministers in which, notwithstanding the opposition of the Minister of Marine, the opinion prevailed to exclude Brimstone from contraband. This result is due to the action of the Consulta (this is the building in which is situated the Ministry for Foreign Affairs), and the influence of our Ambassador in Madrid.

Rome 1. The "Official Gazette" will publish the decision regarding Brimstone. Meantime the Spanish Government has already ordered the commanders of its ships to allow Brimstone to pass free. Several Sicilian deputies who went to the Consulta received full confirmation of what I telegraph you.

861

Malcomson Ex. D24.

No. 21.

No. 123, dated Palermo, Tuesday, Wednesday, 3-4 May, 1898. *Brimstone excluded from Contraband of war.* Rome 3. The Consulta decided not to publish in the "Official Gazette" the Spanish Goverment's decision regarding the exclusion of Brimstone from contraband of war. But the Minister of the Interior sent a Circular to all the Prefects in Sicily informing
862 them of the Orders relative to the free navigation of cargoes of Brimstone.

Malcomson Ex. D 25

No. 125. No. 25

Thursday—Friday, 5th—6th May, 1898.

863 SULPHUR IS NOT WAR CONTRABAND.

From the Minister of Agriculture, Industry and Commerce, the following telegram has been sent.

"CHAMBER OF COMMERCE, PALERMO: I inform the Chamber of Commerce for the useful information of merchants, that by the decree of April 23rd of the Spanish Government, are considered as contraband of war, arms, projectiles, fuses, powder, sulphur, nitre,
864 dynamite, explosives, uniforms, ornaments, saddles, engines for ships, derricks, screws, boilers, and all that is necessary for the construction, repair and armament of men of war. I would also state that in consequence of our request, the Spanish Goverment has given notice to the commanders of its vessels to let sulphur pass free. (Signed) The Minister, COCCO-ORTU."

Malcomson Ex. D 26

865

No. 26

No. 127.

Saturday—Sunday, 7th—8th May.

THE EXPORTATION OF SULPHUR MAY BE CONTINUED.

The Prefettura also with its communication confirms to us that the exportation of sulphur, notwithstanding the Spanish-American war, may continue. Indeed, the Spanish Government has officially declared in the circular to the commandants of their ships, that sulphur is not to be considered as contraband of war. An official and public declaration is lacking, but there is no doubt that sulphur will pass freely.

866

Styria's Exhibit E—T.

ROYAL DECREE.

867

In accordance with the advice of my Council of Ministers; in the name of my son, King Alfonso XIII., and as Queen Regent of the Kingdom,

I decree as follows:

ART. I.—The state of war existing between Spain and the United States terminates the Treaty of Peace and Friendship of the 28th October, 1795, the Protocol of the 17th January, 1877, and all other agreements, compacts and conventions that have been in force up to the present between the two countries.

868

II.—A term of five days from the date of the publication of the present Royal Decree in the Madrid Gazette is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart.

ART. III.—Notwithstanding that Spain is not bound by the Declaration signed in Paris on the 16th April, 1856, as she expressly stated her wish not to adhere to it, my Government, guided by the principles of inter-

869 national law, intends to observe and hereby orders that the following Regulations for maritime law be observed:

(*a.*) A neutral flag covers the enemy's goods, except contraband of war.

(*b.*) Neutral goods, except contraband of war, are not liable to confiscation under the enemy's flag.

(*c.*) A blockade to be binding must be effective; that is to say, maintained with a sufficient
870 force to actually prevent access to the enemy's coast.

ART. IV.—The Spanish Government, while maintaining their right to issue letters of marque, which they expressly reserved in their note of the 16th May, 1857, in reply to the request of France for the adhesion of Spain to the Declaration of Paris relative to Maritime Law, will organize for the present a service of "Auxiliary Cruisers of the Navy," composed of ships
871 of the Spanish Mercantile Navy, which will co-operate with the latter for the purposes of cruising, and which will be subject to the statutes and jurisdiction of the navy.

ART. V.—In order to capture the enemy's ships, to confiscate the enemy's merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary cruisers, and privateers, if and when the latter are authorized, will exercise the right of visit on the high seas and in the territorial waters of the
872 enemy, in accordance with international law and any regulations which may be published for the purpose.

ART. VI.—Under the denomination contraband of war the following articles are included:

Cannons, machine-guns, mortars, guns, all kinds of arms and fire-arms, bullets, bombs, grenades, fuses, cartridges, matches, powder, sulphur, saltpetre, dynamite, and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construc-

tion, repair, and arming of war-ships, and in general all warlike instruments, utensils, tools, and other articles, and whatever may hereafter be determined to be contraband. 873

ART. VII.—Captains, Commanders and officers of non-American vessels or of vessels manned as to one-third by other than American citizens, captured while committing acts of war against Spain, will be treated as pirates, with all the rigor of the law, although provided with a license issued by the Republic of the United States. 874

ART. VIII.—The Minister of State and the Minister of Marine are charged to see the fulfillment of the present Royal Decree and to give the orders necessary for its execution.

MARIA CRISTINA.

Madrid, April 25, 1898.

Styria's Ex. "E."—Proclamation of the Queen Regent of Spain. The original being in Spanish it is omitted and the foregoing English translation thereof is hereby substituted by consent and marked *Styria's* Ex. F 1. 875

Styria's Exhibit F 1.

In the year Eighteen hundred and ninety eight on the 30th of April, in Porto Empedocle.

At reqnest of Messrs. T. F. Florio, of Palermo, who act for a/c and interest of Mr. Alfred Malcomson, of New York, owner of the thousand tons of raw sulphur in bulk loaded on board the Austrian S.S. *Styria* anchored in this port: 876

The undersigned clerk to the Tribunal (civil) and (pena) of Girgenti, where I reside, declared to Mr. A. G. Scopinich, Captain of the above-mentioned steamer, the following:

Petitioner received a letter dated Porto Empedocle, the 27th of April, signed by the intimated, in which he declared, that as he considered a voyage to New

877 York with sulphur dangerous he would discharge the goods in Mr. Zenobio Urso's sheds and in others.

Now, although petitioners have no interest in the goods loaded on the ship which were regularly transferred to Mr. Malcomson, in whose interest they were bought and shipped, but always to defend the rights of the real owner, they with the presents formally claim and protest against the discharge which is threatened, if petitioner should proceed with same without consultation.

878 And for this they hold him responsible for all and whatever damage or trouble, being his fault, that owner of the sulphur might sustain, for whom they hold unprejudiced and with all reserve all rights due to them against all that, which captainmight undertake against law and contract.

And this to be known under all reserve of protests and rights.

The present copy signed by me, clerk to the tribunal, was handed over by me personally in the hands of Cap-
879 tain Scopinich, whom I found on board his steamer, anchored at the extremity of this port at one o'clock, P. M.

(Signed) GIOVANNI MARRIONE.

Styria's Exhibit F2.

In the year 1800 and ninety-eight on the 3d of May,
880 in Palermo.

At request of Mr. Antonio G. Scopinich, Captain of the S. S. *Styria*, of Austrian flag, anchored in Porto Empedocle.

I, the undersigned, clerk to the tribunal of Palermo, where I reside, have declared to Messrs. T. F. Florio of Palermo, with all due respect, that petitioner rejects the protest intimated to him on the 30th of April last, by the clerk Giovanni Marrione.

Petitioner in discharging the goods acted as was his right, and in the best interest of the goods, which is

confirmed by the facts published in the papers and dis- 881
cussed in the Italian Parliament, that sulphur was declared contraband of war by one of the fighting nations.

As per law and agreement, the sulphur was discharged for a/c and risk of shippers, excepted their connection with consignees.

Petitioner in the meantime protests against all delay, expenses and damages which the obstinacy of Messrs. Florio might have as consequence.

Copy of the present act signed by me clerk, has been 882
taken to the above-mentioned address of Messrs. T. & F. Florio, and was handed over into the hands of a clerk employed by above firm, as I could not find a representative of the firm.

(Signed) NICOLO SAROCCA.

Parsons' Ex. F3.

883

(Copy of translation).

Porto Empedocle, 2nd day of May, 1895.

At the request of Messrs. Ferd Baller & Co., of Messina, where they are domiciled, acting for Messrs. Parsons & Petit, of New York, in their interest and that of all concerned, I, the undersigned, usher of the Pretura of Girgenti, where I am domiciled, declared to Captain A. G. Scopinich, of the Austrian steamer *Styria*, anchored in this port as follows: Considering 884
that the said Captain of the 21st of April last, loaded for account and interest of said Messrs. Parsons & Petit, the quantity of 350 T brimstone on board said steamer as p. agreement of charter. Considering that without any reason said Captain took the liberty to discharge and deposit said quantity of sulphur here in Porto Empedocle, which operation caused heavy damages to the protestors, and to all concerned. Considering the above and all or any other reasons of right or fact, the protestors hereby protest against the said

885 Captain A. G. Scopinich, and against his owners, holding them responsible for all damages, charges, interest, loss of profit, averages, etc., which may take place, and therefore will in case of need proceed to apply to the competent Court. A copy of this present act checked and signed by myself I have delivered to Capt. A. G. Scopinich, on board above steamer, at 11 1/4 o'clock.

(Signed) GERLANDO SCHEMBRI, Usher.

886

Parsons' Exhibit F4.

Translation.

MESSINA 5th day of May 1898

At the request of Mr. A G Scopinish, Captn of Austrian steamer *Styria* at present in the port of Porto Empedocle, I, the undersigned, usher of the Civil Tribunal of Messina, where I have my domicile, have declared to the firm of Messrs. Ferd Baller &
887 Co here domiciled, in their quality of representatives of whom it may concern, that the above Captn refused to accept the protest made on 30th April last thro' the usher Giovanni Marrioni. The Captain by discharging the goods has acted according to his right & in the best interest of the merchandize itself. This is confirmed by the fact published in the Papers and discussed in the Italian Parliament, that Brimstone has been declared contraband of war by one of the belligerent powers. By law, & agreement with the
888 Captain, the Brimstone is discharged for account & risk of shippers with due reserve of what may be their relations to the receivers in New York. Meantime the Captain protests against all delays, charges & damages which he may suffer through the obstinacy of said Messrs Ferd Baller & Co, and invites them to reimburse all charges he has incurred for discharging &c. This protest is made to be valid in case of law.

A copy of this present has been handed by me to the said Messrs. Ferd Baller & Co. here domiciled.

(Signed) ANTONIO ALLEGRO, Usher.

Parsons' Ex F5 14/99

Translation.

Porto Empedocle 6th day of May 1898.

At the request of Messrs. Ferd Baller & Co of Messina, acting on behalf of Messrs Parsons & Pettit of New York, in their interest & in the interest of whom it may concern, I, the undersigned Usher of the Pretura of Girgenti, where I am domiciled, declared as follows to Mr A G Scopinich Captn of Austrian S. S. *Styria* anchored in this port. In continuation of the protest dated 2 May through the Usher Gerlando Schembri, His Excellence the Minister of the Interior telegraphed to the prefects of Sicily that the Spanish Government has officially declared that with circular to the commanders of its ships of war it had ordered that Brimstone was not to be considered contraband of war. An official and public declaration is wanting but there can be no doubt that Brimstone will pass freely. Messrs Ferd Baller & Co therefore give notice to said Captn Scopinich that he must reload the Brimstone illegally discharged, not because it was necessary but as a base speculation on his own part & that of his Owners, who tried to get free from carrying the 350 T. Brimstone to New York for the purpose of loading other merchandize at a higher rate of freight in their own interest. Messrs Ferd Baller & Co. therefore in name of whom it may concern protest against said Captain and hold them responsible not only himself but also his owners, for all consequences, damages, charges & interest which have & may occur, & this protest is made to be valid in case of law. A copy of this present act checked, & signed by myself I have delivered to Captn Scopinich of S. S. *Styria* still in this port.

889 890 891 892

(Signed) Mario Travati, Usher.

893

Parsons, Ex. F 6 Feb. 14/99.

Messina, 11th day of May, 1898.

(Translation.)

At the request of Mr. A. G. Scopinich, master of the Austrian SS. *Styria*, I, the undersigned, usher of the Civil Tribunal of Messina, declared to Messrs. Ferd. Baller & Co., here domiciled, in their quality of representatives of whom it may concern. That the Captain refuses the protest intimated to him on 6th
894 inst. because it is not true, or at least not officially, that the Spanish Government has recalled by decree the previous decree declaring brimstone included in contraband of war. Messrs. Baller recognize that a public and official declaration of such recall is wanting, nevertheless they insist that the brimstone be reloaded, when said Captain having already made the discharge has been obliged to provide differently for the interest of the ship. The above said captain refuses the base
895 and slandering insinuations appearing in said protest regarding the reasons for the discharge of the sulphur, and reserves to himself the right to sue Messrs. Baller for all damages, charges and interest deriving from the discharge, which has to be effected from their unreasonable protests. A copy of the present act signed by me was presented in the domicile to Messrs. Ferd. Baller & Co.

(Signed) Antonio Allegra.

896

Parsons, Ex. F 7 Feb. 14/99.

(Translation.)

Austro-Hungarian V. Consulate,
Porto Empedocle, 30 April 1898.

In reply to your telegram of this date, beg to inform you that no act of protest has been made by the Captain of SS. *Styria* for discharging the brimstone only by letter dated 27th inst. he merely informed us that owing to the war he was discharging the brim-

stone at the expense and risk of whom it may concern, 897
and that he deposited the same in the warehouse of Mr. Zenobia Urso under the care of his agent, Mr. William Peirce.

No other official news exists at the Vice-Consulate regarding S. S. *Styria*.

(Signed) I. & R. Vice-Consul,
SALVATORE VINTI.

898

Munroe Ex. F8.

In the year eighteen hundred and ninety-eight on the 2d of May in Porto-Empedocle.

At request of the respectable firm Messrs. L. Amato in Palermo, acting for a/c of Messrs. John Munroe & f. in New York, owners of the 100 tons sulphur in bulk on board of the Austro-Hung. S.S. *Styria* anchored in this port.

I undersigned clerk of the tribunal (civil & penal) 899
in Girgenti where I live, have declared to Mr. Antonio G. Scopinich, captain of the above named steamer, that the petitioners received a letter dated Porto-Empedocle the 27th ulto. *i. e.* the past month of April, signed by the summoned in which he declares that he considers a voyage to New York with a cargo of sulphur as dangerous, and that he would discharge the sulphur in the stores of Mr. Zenobia Urso of Porto Empedocle and others. Although petitioners have no interest in the goods shipped on this boat, being trans- 900
ferred to Messrs. John Munroe & Co. in whose interest the goods were bought and shipped, always to protect the rights of the real owner, they herewith personalty claim and protest against the received advise of the summoned re. the discharge which he announces and if he intends to proceed with same without permission.

And for this they hold him responsible for all damages, not excluding the breaking up of the sulphur and troubles in this matter caused by the summoned to the proprietors of the sulphur in question to whom they

901 reserve unprejudiced all rights which belong to them for their defence against all that, the above captain will undertake contrary to law and contract.

This to inform him under all protest and reserve of rights.

This copy signed by me clerk to the tribunal has been taken by me on board of the above mentioned S/S. *Styria* anchored at the extremity of this port, and handed over personally to the summoned at nine o'clock.

902 (Signed) Giovanni Marrione.

Exhibit F9.

In the year 1800 and ninety-eight, on the 3rd May in Palermo.

At request of Mr. Antonio G. Scopinich as captain of S/S *Styria* under Austro-Hung. flag, moored in 903 the port of Porto Empedocle.

I, undersigned clerk to the civil tribunal of Palermo, where I belong to and stay, declared to Messrs. F. Amato & Co. here in Palermo, piazza Marina No. 27, with all the due respect that the captain declines the protest of which he was given legal notice on the 30th of April last by the clerk to the tribunal Giovanni Marrione. The petitioner, in discharging the cargo, proceeded in his right and to the best interest of the goods. This is confirmed by the fact published in the 904 papers and discussed in the Italian Parliament, that sulphur had been declared contraband of war by one of the fighting nations.

As per law and for convenience of petitioner the sulphur was discharged for a/c and at shipper's risk, taking in consideration the arrangements with consignees.

Petititioner protests in the meantime for all delay, expenses and damages which the obstinacy of the said firm Amato is responsible for, and asks this firm to re-

fund the expenses due to delay of discharge and others, 905
This is valid for any effect of the law,

A copy of this present act, signed by me, undersigned clerk to the tribunal, has been taken by me to the above-mentioned residence of Messrs. J. Amato & Co., and I handed same over to one of the clerks of said firm, as I did not find the representative himself.

(Signed) Nicolo Savoca.

906

Exhibit F10.

In the year 1800 and ninety-eight on the 17th of May, in Messina.

At request of Mr. Antonio Girolamo Scopinich, captain of the Austro Hungarian steamship *Styria* already a(n)chored in Port Empedocle and now on her voyage.

I the undersigned clerk to the tribunal of Messina have notified and herewith given identical copy to 907
Messrs. Emil Fog & Sons of Messina with all due respect which they deserve of the superior recourse of the relative decree of the Praetor of Girgenti with which authority is given to Petitioner to proceed with the sequestration of the sulphur. And this to be known and for every effect of the law. And I have also notified that the sequestration was effected in Porto Empedocle by the Clerk Travali on the 8th inst.

At the same time and at the same request I have summoned above firm to appear before the civil tri- 908
bunal of Girgenti for the sitting on the 21st June at the legal hour and in the usual locality to listen to the (judgement)? of the following questions :

Considering the facts mentioned in the superior recourse.

Considering the decree of which the foregoing is the effected sequestration.

Considering the right of the tribunal of Girgenti to decide on this action.

Considering that as per law and agreement the dis-

909 charging expenses have to be reimbursed by shippers, who have also to pay the store-rent.

Considering everything else.

It may please the tribunal.

To confirm the sequestration as above

Sentence the above firm to pay to petitioner the sum of three thousand five hundred Lire, this being amount of discharging expenses also to pay the store rent in proportion of one per cent. for every year or fraction of years

916 Sentence them to pay expenses of sequestration and present judgement.

Order the sale of the sequestrated sulphur ex *Styria* handing over a sufficient sum to cover expenses so far as to satisfy Petitioner's credit.

Excepted other and more important rights.

For Petitioner advocate Enrico La Loggia will act.

Copy of this act above ricourse and decree signed by me was taken to the address to Emil Foge & Sons handing same to a person of their employ cable of re-

911 ceiving same having not found the representative of the firm.

Styria's Exhibit G

February 14, 1899.

Account sales of brimstone per S. S. *Abbazia* from Sicily as per weight returns Oct. 11, 1898.

912

965 1510/2210 tons Best U 2nd Batons at $20.50 ton	$19,796.32	
Less bkge 1%.....	197.96	
		$19,598.36
486 105/2240 tons Best 3rds D at $18.50 ton.....	8,991.87	
Less bkge 1%.....	89.92	8,901.95
		$28,500.31

913

Malcomson Exhibit H.

February 16/99.

Styria
and or

Account Brimstone per s/s *Albazia* from Sicily to New York.

1898			
Jul. 18	Invoice Cost together with the Bankers Commission		$28,113.88
"	Freight paid.....	2,182.50	
	Marine Insurance Sicily to New York..... .	206.30	
	Weighing at Port of New York.....	116.12	
	Custom House Entry..	4.50	2,509.42
			$30,623.30
Oct. 11	Proceeds of sale of above Brimstone ex S/S *Abbazia* on arrival at New York at market price...		28,500.31
	Difference between Import cost and proceeds of sale–loss....		$2,122.99

914

915

916

917

Parsons, Exhibit I.

February 16, 1899.

Memo. sale 100 tons Real best unmixed 2ds Brimstone per *Abazia*.

Oct. 3/98 901/2240 tons Real best mixed 2ds Brimstone @ $21 3/8 ..... 2,103.35

Charges.

918	Freight @ 1/6 — £36.18/0 @ 4.85	178.96	
	Insurance 2142 @ 1/2 20%...	8.57	
	Bankers Coms. on £408 0/4 @ 1/2% = £20/10 @ 4.85.	9.90	
	Entry at C. H.....	4.50	
	Weighing @ 8c. per ton....	7.88	209.81
			$1,893.54

E. & O. C.

New York, Oct. 7th, 1898.

919 Parsons & Petit,
by W. A. Stopford.

Memo. sale 250 tons Real best unmixed 2ds Brimstono pr. *Abbazia*.

Oct. 6. 240 1962/2240 tons @ $22.00..... 5299.27

Charges.

	Freight on 240 1962/2240 @ 6/		
920	£72.5/7 @ 4.85.....	350.55	
	Insurance on say 5579 @ 1/2 20%....	22.32	
	Bankers Coms. on say £1062 10/0 @ 1/2% £5 6/2 @ 4.85.....	25.74	
	Entry at Custom House.....	4.50	
	Weighing @ 8c. pr. ton	19.28	
	Coms. & Guarantee on 5292/29 2% ..	105.99	528.38
			$4770.89

E. & O. E.

New York, Oct. 7th, 1898.

Parsons & Petit,
by W. A. Stopford.

Invoice value of 250 tons best unmixed 2ds Brim- 921
stone consigned by Messrs. Ferd. Baller & Co. per *Styria* to Parsons & Petit for sale.

Baller cable recd. Apl. 20/98.

250 tons @ 91/.... .....£1137.10/0
Less fgt. @ 6 .... 75.0/0

£1062 10/0
Consils cert..... 10/4

£1063 0/4 922

@ say 4.85 3/4....$5163.60.

Munroe Exhibit J.

STERN & RUSHMORE,
40 Wall Street, New York.

923

December 9th, 1899.

DEAR SIR:

Your favor of the 7th inst. is at hand, in which you ask us to send you Munroe's Exhibit J in the *Styria* matter. We do not find the same, but on the reference before the Master we went into proof, and it was there stipulated that the invoice value of the goods was $2,329; that the shipment was 100 tons of Brimstone, best unmixed seconds; that the weighing charges 924
amounted to $10; and the freight to $145.50; that the Brimstone was sold for $1,997.08, and we will consent to having the Exhibit J consist of the items above stated if the original exhibit cannot be found.

Very truly yours,
STERN & RUSHMORE.

S. H. LYMAN, Esq.,
Clerk District Court of the United States,
Clerk's Office, New York City.

925

Opinion.

In Admiralty. Discharge of Contraband Goods.
Cowen, Wing, Putnam & Burlingham; Sullivan & Cromwell.; Bowers & Sands, and Stern & Rushmore, for the four different Libellants.
Convers & Kirlin, for the *Styria*.

Brown, J.:

926 The above four libels were filed to recover the damages claimed to have been sustained by the libellants, who were the consignees of different lots of brimstone shipped upon the Austrian steamship *Styria* at Port Empedocle, Girgenti, Sicily, in the latter part of April, 1898, and shortly afterwards discharged at the same port, as contraband goods, on the breaking out of the war with Spain. The loading was finished on April 24th and the bills of lading were signed and the ship cleared from the Custom House at Port Empedocle on the same day. On April 20th the Spanish Minster left
927 Washington, and on April 21st our Minister left Madrid. On April 23rd the Queen Regent of Spain issued a decree announcing the existence of war with the United States, which was published in the official papers at Madrid on April 24th, and communicated to the other Powers and made public on or about April 25th. On that day it was published in the newspapers of this country, and presumably in Sicily and England. The declaration of war was made by the United States under an Act passed April 25th, declaring the existence of
928 war since April 21st. On the 22nd the President had proclaimed a blockande of certain Cuban ports.

In Article 6 of the Spanish Proclamation, sulphur was declared contraband of war.

On April 23rd the master received a telegram from Burrell & Sons, the managing agents of the owners of the *Styria* in London, not to sail until further instructions, and on the 25th, a telegram "to discharge whole cargo as quickly as possible." On the 26th, the weather being bad no work was done. On the 27th the discharge was commenced and continued until May 7th, when it

was completed. The ship then cleared and proceeded 929
to Messina and Palermo, from which ports she sailed with a cargo of fruit on May 9th, and arrived at New York on June 3rd. At the commencement of the discharge of the sulphur at Port Empedocle the master gave a notice to the shippers, and to the Austrian Consul at Girgenti, stating that "on finding risky his passage to New York with a sulphur cargo, for facts of war" he discharged the cargo on their account and risk under the bills of lading. He testifies that though directed to discharge by the owners, he did not deem it safe to pro- 930
ceed with a contraband cargo, and would not have sailed with such a cargo without knowing certainly that sulphur was free; that he knew sulphur to be contraband of war; that Spain held it to be so; that war existed; that he heard that a blockade of New York was going on; that his course lay along the Spanish coast; that Spanish men of war were looking for ships there; that he believed this report; that the newspapers in Sicily reported the capture of a sulphur ship; that up to the time he left Sicily there was no public or official declaration that sulphur had been excluded by Spain from the list 931
of contraband goods.

On the other hand it appears from the captain's testimony and other evidence, that almost immediately after the proclamation was published, negotiations were entered upon for the exception of sulphur from contraband goods; that the captain was aware from the public prints of these negotiations, and of the frequent statements in the public prints that the efforts for the exception of sulphur would be successful, and of the announcement before he left Sicily that sulphur would go 932
free. There was not, however, any official confirmation of this statement, though the papers published it as a fact. On April 25th and 26th the *Lord Warwick,* which lay alongside of the *Styria,* sailed for New York with brimstone, and two other vessels from Licata with a similar cargo; all of which passed safely. One of the shippers by the *Styria,* Baller & Company, on May 5th gave notice to the master that "sulphur is no longer contraband of war," though saying in their protest "it is not yet officially confirmed." At Messina, the cap-

933 tain heard read an official announcement by the Prefect that the following telegram had been received by him on May 4th from the Minister of the Interior:

"The Spanish Government has *declared officially in* a circular to the commanders of its own ships, that it has decided that sulphur should not be considered as contraband of war. There is no public or official declaration, but there can be no doubt that sulphur will pass freely."

934 It does not appear that any vessel was stopped by the Spanish on account of sulphur.

Among the exceptions in the bills of lading were the following:

(*a.*) "Restraints of Princes and Rulers or People excepted."

(*b.*) "In case of blockade or interdict of the port of discharge, or if without such blockade or interdict, the master shall consider it unsafe, for any reason, to enter
935 or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe, at shipper's risk and expense; and on the goods being placed in charge of any mercantile agent or of British consul, and a letter being put into the Post Office, addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the shipper's risk and expense, and the master and owners discharged from all responsibility."

(*c.*) "With liberty (in event of steamer putting back
936 to this or into any other port or otherwise being prevented from any acts from commencing or proceeding in the ordinary course of her voyage) to ship or tranship the goods by any other steamer."

(*e.*) "With liberty either before or after proceeding towards the port of discharge to proceed to and stay at any port or place whatsoever."

The above four libels were filed June 4 to June 7, 1898, a few days after the arrival of the ship in New

York. They allege the shipment under the bills of lad- 937
ing, their endorsement to the libellants, the loading of the cargo, the demand for the delivery of the goods at New York, the refusal to deliver and the consequent damage to the amount of the value of the sulphur. Two of the libels allege a conversion of it. The answers were interposed on the following December 1st. In the meantime an agreement by stipulation had been made between the parties, providing that the claimant should forward the brimstone from Empedocle upon the first available steamer to New York, and deliver it to the 938
consignees on the terms for freight as specified in the bills of lading; and that the consignees should pay the agreed freight on delivery; that the goods on arrival should be sold at current market rates, and the proceeds of the goods less charges incurred, be credited on account of the damages, if any, recovered by the libellants; that the respondents should have a lien on the brimstone for the charges against it in Sicily, provided the respondent was justified in relanding and storing it there as was done; if not justified, then the brimstone 939
should be freed from any such charges or expenses except freight. Under this agreement the respondent again caused the brimstone to be loaded and brought to New York by the *Abazzia,* one of its vessels, in August and September, 1898, after paying all the expenses in Sicily, and delivered the sulphur for sale under the agreement, whereupon it was sold, netting about the amount of the invoice prices, and on some of the consignments more than the invoice price, not counting the freight.

The respondent in its answers to the above libels sets 940
up the agreement last named; the payment of the net proceeds to the libellants; that the net proceeds exceeded the invoice price; that the libellants had sustained no damages recoverable against the respondent under the following stipulation in the bill of lading:

'The shipowner is not to be liable * * * in any case for more than the invoiced or declared value of the goods, whichever shall be the least"; and that the discharge and storage of the sulphur at Empedocle was

941 justifiable under the provisions of the bill of lading and the acts and circumstances of war.

The owner of the *Styria* also filed four cross-libels against the above libellants for the recovery of the expenses incurred at Sicily in the discharge and storage of the sulphur upon the same ground pleaded in its answers to the original libels.

1. Though exceptions (*a*) and (*b*) above noted in the bill of lading contemplate circumstances of war and are therefore applicable in the extraordinary circum-
942 stances that arose, still the carrier is not thereby relieved from the duty of acting with reasonable prudence for the interests of all concerned. The master as the agent of all concerned is still bound to a prudent regard for the interests of the cargo, and "must endeavor to hold the balance evenly" between ship and cargo, when their interests conflict. The *Julia Blake,* 107 U. S., 418, 427-8, 431; The *Spartan,* 25 Fed., 44, 56-58; *L'Amerique,* 35 Fed., 844-5; Cargo *ex Argos,* L. R., 5 P. C., 134, 165; Noble *v.* Jenkins (1896), 2 Q. B., 326, 331-2.

943 The sulphur being generally regarded as contraband of war, and also within the express terms of the Spanish proclamation, a voyage through the Mediterranean, past the coast of Spain and through the Straits of Gibraltar would presumably be pecuniarily dangerous to the cargo, even though the vessel, as a neutral, might not be liable to condemnation as prize. In case of seizure, however, the shipowner would suffer from the considerable delay incident to the seizure though she were ultimately released.

944 Except, therefore, for the negotiations immediately entered on for procuring an exception of sulphur from contraband, I have no doubt that it would have been both the right and the duty of the master for the interests of the cargo as well as of the ship, to refuse to sail with this cargo after clearing on April 24th until there was some reasonable assurance of safety. See the *San Roman,* L. R., 3 Adm. & Eccl., 583, where there was a delay of three months. The discharge and storage of the cargo, however, was an act necessarily involving considerable expense to the shipper or consignee; and before imposing such an expense upon the cargo, the

master in my judgment was bound in view of the daily 945
reports of current negotiations and the expectations of the exception of sulphur, to wait a reasonable period for satisfactory assurances in that regard. No doubt any delay entailed some loss upon the ship, and what should be deemed a reasonable period ought to be determined with reference to the circumstances and interests of both. But taking the circumstances altogether, I am of opinion that the commencement of the discharge on the 27th was too hasty and precipitate; and that the master was guided in that matter by the telegram from 946
Burrell & Son, the managing agents in London, rather than by his own judgment on all the circumstances known to him at the time. Had he been left to exercise his own judgment, I do not think, upon the testimony, that he would have discharged the cargo—especially not at the time he did; and that before he left Italy, although there was no formal publication of the exception of sulphur, there were such informal assurances coming from the Spanish Government as left no reasonable apprehension of danger from sailing with a sulphur cargo.

947

I must find, therefore, that the ship was not justified by clauses (*a*) and (*b*) of the bill of lading above quoted in discharging and storing the cargo on account of the shippers, as she did, between April 27th and May 7th; that by the 10th of May there was reasonable assurance that it would be safe to go on with the voyage, and that this was not an unreasonable time for the ship to wait under the facts and circumstances currently known in Sicily at that time. In Noble *v.* Jenkins, *supra*, t' facts were otherwise.

948

2. The defendant also invokes the liberty to tranship under clause (*c*) of the bill of lading above quoted. This is a clause which is no doubt designed for the benefit of the ship alone, in any emergencies that might call for the exercise of the option given. That clause might perhaps have been applicable in the present case, though without advantage in the result to the defendant, since the defendant would under this clause alone stand chargeable with all the expenses of discharge, storage and reloading. It was doubtful how long the vessel might be detained before it could be ascertained and de-

949 termined whether a contraband cargo could be carried with a reasonable prospect of safety or not. The ship may, therefore, have had the option under this clause, in conjunction with clauses (*a*) and (*b*) above referred to, to discharge the cargo immediately and store it, as she did, rather than incur a certain loss by detention of the vessel for a more or less indefinite period while waiting until it was found safe to proceed; and while thus discharging at once, she might leave it to the chances of future events to determine against which interest,
950 whether of ship or cargo, the expenses should be charged. If the result should show that the vessel would have been detained an unreasonable time before she could have safely sailed, then the expense would properly fall on the cargo, because the discharge would have been justified by the danger clauses (*a*) and (*b*); but if on the other hand, it should turn out that the vessel might have safely sailed within a reasonable time, having due reference to the interests of both ship and cargo, then the discharge could not be justified under clause (*b*), but under
951 clause (*c*) alone; and any such transhipment being at her own option and for her own convenience, all the expenses of discharge, storage and reshipment would fall upon the ship, as in any other case of a transfer and reshipment under clause (*c*).

In this case, however, the discharge was stated by the master at the time to be based upon his rights under clauses (*a*) and (*b*) only; and the various clauses of the agreement subsequently made between the parties, under which the cargo was brought forward, seem based
952 upon the same assumption.

3. The stipulation in the bill of lading, that the shipowner "is not to be liable in any case for more than the invoiced or declared value" of the goods, does not mean that the consignees shall pay freight in addition to the loss of the invoice price; but under the agreement with the parties for forwarding the cargo to New York, I think that the consignees are entitled to deduct the freight paid by them from the gross proceeds of the sale of the brimstone, as a part of the expenses of realizing the moneys derived from it.

Decrees may be entered in accordance with the above findings; and if the parties cannot agree as respects the net proceeds and the invoice price, a reference may be taken in each case to adjust the same. 953

April 5/99.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the City of New York, on the 13th day of April, 1899. 954

Present—Hon. ADDISON BROWN, Judge.

AUSTRO-AMERICANA STEAMSHIP COMPANY

AGAINST 955

3,250 Cantars of Brimstone, owned by JAMES L. MORGAN and others *ex* S. S. "ABBAZIA."

This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, now on motion of Cowen, Wing, Putnam & Burlingham, proctors for claimants, 956 it is

Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed with costs.

And it is further ordered, adjudged and decreed that the claimants, James L. Morgan, John M. Goetchius, James L. Morgan, Jr., Henry K. Goetchius and Lancaster Morgan, recover herein against the libellant, the Austro-Americana Steamship Company the sum of $41.09 costs as taxed, and that unless this decree be

957 satisfied or proceedings thereon stayed on appeal within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs on the part of the libellant cause the engagements of their stipulation to be performed, or show cause why execution should not issue against their goods, chattels and credits to enforce satisfaction thereof.

ADDISON BROWN.

[Endorsed:]—Final decree filed Nov. 14, 1899.

958

At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 13th day of April, 1899.

959 Present—Hon. ADDISON BROWN, Judge.

AUSTRO-AMERICANA STEAMSHIP COMPANY,

Libellant,

AGAINST

960 4,550 Cantars of Brimstone, owned by SCHUYLER L. PARSONS, *ex* S/S "ABBAZIA,"

Claimant.

This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, and due deliberation being had in th premises, and it appearing to the Court that the claimant has made out a sufficient and valid title to

the brimstone; now on motion of Bowers & Sands, 961
proctors for the claimant, it is now

Ordered, adjudged and decreed, that the libel filed in the cause be dismissed wiht Forty-one 00/100 dollars costs taxed against libellant.

ADDISON BROWN.

[Endorsed:]—Final decree.—Filed Oct. 2, 1899.

At a Stated Term of the District Court of 962
the United States for the Southern District of New York, held at the Court Rooms in the City of New York, on the 6th day of October, 1899.

Present—Hon. ADDISON BROWN, Judge.

AUSTRO-AMERICANA STEAMSHIP COMPANY, 963

vs.

1,500 Tons of Brimstone owned by ALFRED S. MALCOMSON, *ex* Steamship "ABBAZIA."

964

This cause having been heard on the pleadings and proofs of the respective parties and having been argued by the respective advocates, now, on motion of Sullivan & Cromwell, proctors for claimants, it is

Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed with costs. And it is further

Ordered, adjudged and decreed that the claimant, Alfred S. Malcomson, recover herein against the libel-

965 lants, the Austro-Americana Steamship Company, the sum of $31.85 costs, as taxed, and that unless this decree be satisfied or proceedings thereon stayed on appeal within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs on the part of the libellant cause the engagements of their stipulation to be performed or show cause why execution should not issue against their goods, chattels and credits to enforce satisfaction thereof.

ADDISON BROWN.

966 [Endorsed:]—Final decree filed Oct. 6, 1899.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms at the City of New York, on the 24th day of October,
967 1899.

Present—Hon. ADDISON BROWN, Justice.

AUSTRO-AMERICANA STEAMSHIP COMPANY,
Plaintiff,

AGAINST

968 100 Tons of Brimstone, owned by JOHN MUNROE & COMPANY, *ex* Steamship "ABBAZIA,"
Defendant.

This cause having been heard on the pleadings, and proof of the respective parties having been argued by the respective advocates,

Now, on motion of Stern & Rushmore, proctors for 969
the claimants, it is

Ordered, adjudged and decreed that the libel herein be and the same is hereby dismissed with costs.

Further ordered, adjudged and decreed that the claimants, John Munroe, Edgar Lockwood, Henry W. Munroe and Frederic de Reiset, recover herein against libellant, the Austro-Americana Steamship Company, the sum of thirty-nine and 19/100 dollars costs as taxed, and that unless this decree be satisfied, or proceedings thereon stayed on appeal within the time and in the 970
manner prescribed by the rules and practice of this Court, the stipulators, for costs on the part of the libellant, cause the engagements of the stipulation to be performed, or show cause why execution should not issue against their goods, chattels and credits to enforce the satisfaction thereof.

Enter.

ADDISON BROWN.

Notice of settlement waived, no objection to form of 971
decree.

CONVERS & KIRLIN.

[Endorsed:]—Final decree filed Oct. 24, 1899.

972

973 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the City of New York, on the 12th day of April, 1899.

Present—Hon. ADDISON BROWN, Judge.

974 JAMES L. MORGAN, JOHN M. GOETCHIUS, JAMES L. MORGAN, Jr., HENRY K. GOETCHIUS and LANCASTER MORGAN

AGAINST

The Steamship "STYRIA," her engines, etc.

975

This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, now on motion of Cowen, Wing, Putnam & Burlingham, proctors for the libellants, it is

Ordered that the libellants above named recover herein the damages by them sustained by reason of the matters set forth in the libel, and that it be referred to Wm. 976 P. Prentice, Esq., Special Commissioner of this Court hereby appointed to ascertain such damages, and to report to this Court with all convenient speed.

ADDISON BROWN.

[Endorsed:]—Interlocutory decree.—Filed July 3, 1899.

977 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the City of New York, on the 12th day of April, 1899.

Present—Hon. ADDISON BROWN, Judge.

978 JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERIC DE REISET

AGAINST

The Steamship "STYRIA," her engines, &c.

979 This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates,

Now, on motion of Stern & Rushmore, proctors for the libellants, it is

Ordered, that the libellants above named recover herein the damages by them sustained by reason of the matters set forth in the libel, and that it be referred to Wm. P. Prentice, Esq., a Special Commissioner of this Court hereby appointed to ascertain such damages, and to report to this Court with all convenient speed.

980 ADDISON BROWN.

A copy.

SAMUEL H. LYMAN,
Clerk.

[Endorsed:]—Interlocutory decree.—Filed Oct. 27, 1899.

981 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the City of New York, on the 9th day of August, 1899.

Present—Honorable ADDISON BROWN, Judge.

982 ALFRED S. MALCOMSON

AGAINST

The Steamship "STYRIA," her engines, etc.

983 This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, now on motion of Sullivan & Cromwell, proctors for the libellants, it is

Ordered, that the libellants above named recover herein the damages by them sustained by reason of the matters set forth in the libel, and that it be referred to William P. Prentice, Esq., a Commissioner of this Court, to ascertain such damages, and to report to this Court with all convenient speed.

ADDISON BROWN.

984 [Endorsed:]—Interlocutory decree.—Filed August 24, 1899.

985 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the City of New York, on the 11th day of April, 1899.

Present—Hon. Addison Brown, Judge.

Schuyler L. Parsons vs. Steamship "Styria," her tackle, etc.	986

This cause having been heard on the pleadings and proofs of the respective parties, and having been argued by the respective advocates, now on motion of Bowers 987
& Sands, proctors, for the libellants, it is

Ordered that the libellants above named recover herein the damages by them sustained by reason of the matters set forth in the libel, and that it be referred to Wm. P. Prentice, Esq., a Special Commissioner of this Court hereby appointed to ascertain such damages, and to report to this Court with all convenient speed.

Addison Brown.

[Endorsed:]—Interlocutory decree, filed 1899. 988

989 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN *et al.*

vs.

990 The S. S. "STYRIA."

Before William P. Prentice, Esq., Special Commissioner.

NEW YORK, April 25th, 1899.

Met pursuant to notice.

Present—The COMMISSIONER:

991 APPEARANCES:

Mr. CHARLES C. BURLINGHAM, for the Libellant.
Mr. J. PARKER KIRLIN, for the Claimant.

It is stipulated that the stenographer's fees shall be a taxable disbursement in this proceeding.

MR. BURLINGHAM: I offer in evidence from page 13B, of the testimony, the following stipulation made on the trial.

"It is agreed that the proceeds of sale of the Morgan
992 sulphur was $4,513.46, being 243 tons and 2,174 pounds at $18.50 a ton. Charges for freight $354.98. Weighing $24.40."

MR. KIRLIN: I object to the item of freight on the ground that it was agreed between the parties that the libellant should pay the freight absolutely, and that freight was not included in the charges which were to be deducted from the proceeds of sale under the stipulation pursuant to which the cargo was brought forward. Also that it is immaterial and irrelevant.

THE COMMISSIONER: Decision reserved upon Mr. Kirlin's objection.

It is admitted that the steamship *Styria* arrived in the Port of New York from Italy and Sicilian ports on or about the 3rd day of June, 1898.

ALFRED S. MALCOMSON, a witness called on behalf of the libellant, being duly sworn, testified as follows: 994

EXAMINED by Mr. Burlingham:

Q. What is your business, Mr. Malcomson? A. I am an importer and broker.

Q. In what kinds of merchandise? A. In sulphur and nitrate of soda and various other chemicals.

Q. How long have you been in that business? A. 15 years or more.

Q. What is your firm? A. I am in business for myself—Alfred S. Malcomson & Co.

995

Q. Your place of business? A. 5 Hanover street.

Q. Have you been familiar during the last few years with the market value of sulphur? A. Yes, sir.

Q. You were here, were you, last May and June, 1898, here in New York? A. Yes, sir.

Q. And all through last year you were dealing in sulphur, importing it, were you? A. Yes, sir.

Q. I don't know whether you saw Mr. Morgan's sulphur that was originally shipped on the *Styria* and came forward by the *Abbazia*, did you? A. I did not see it.

996

Q. You had some sulphur on the same ship, did you not? A. Yes, sir.

Q. The sulphur is described in the bill of lading as Licata best thirds; is that a well-known brand or grade? A. That is a grade; that is one of the grades comes to this country.

Q. Licata means the place it comes from? A. The port of shipment; where it is loaded ordinarily.

Q. What was the market value of Sicilian brimstone

997 Alfred S. Malcomson.

best thirds in this port say on June 3rd or therabouts, 1898?

Objected to as immaterial and irrelevant and as concluded by the decision of the Court, which was that the damage should be assessed on the basis of the invoice value.

Decision on the objection is reserved.

998 Q. What was the market value of Licata best thirds on or about June 3rd, 1898?

Same objection. Decision reserved.

A. As I remember there were no thirds here in New York just at that time.

Q. Were they in the vicinity? A. I had some in Philadelphia.

Q. What were the prices current for Licata best
999 thirds then?

Objected to as immaterial and irrelevant. Decision reserved.

A. I sold them at that time in Philadelphia at $30 a ton.

Q. You have not answered the question directly, which was not what you did, but what the current market price, the ruling price for best thirds was about that time? A. $30 in Philadelphia, and there were none in
1000 New York.

By the Commissioner:

Q. Did the price in the New York market vary from that in Philadelphia? A. Well, yes. If you wanted it in New York you would have to pay the freight over, which would be $1.50 more in New York.

By Mr. Burlingham:

Q. It is only the variation in price between New

York and Philadelphia, the freight between the two places? A. That is the only variation.

Q. That is the rule, is it? A. That would be the rule.

Cross-Examination by Mr. Kirlin:

Q. Did you have any thirds on the *Abazzia* yourself? A. Yes.

Q. What time did she arrive here, do you recollect? A. It was early in October, I think. 1002

Q. What was the market value of thirds at that time? A. About $18.50, as I remember.

Q. How much did you get for yours that came on the *Abazzia?* A. I could not tell you whether it was $18.50 or $19.50.

Q. Wasn't it over $20? A. I think it was $18.50. I can refer and refresh my memory. Thirds you asked me about?

Q. Yes. A. I think it was $18.50.

Q. According to your bills of sales you got $20, as I remember it? A. For thirds? 1003

Q. Yes. A. I think the seconds sold for $20.50. I think it was $18.50 for thirds and $20.50 for seconds. It is on record.

Q. Did yours sold from the *Abbazzia* bring the current market rate? A. Yes.

Q. And the price that you realized on your thirds that came by the *Abbazzia* was the market rate at that time, was it? A. Yes.

Q. So that if your memory is wrong about the $18.50, what yours brought is really the correct market value at that time? A. Yes, sir. 1004

Q. What is the demand for sulphur here and where is the chief demand? A. It was all over the country, sir.

Q. Is there a regular market here? A. A Well, it is used by most chemical concerns.

Q. There is no exchange, I suppose? A. No.

Q. How many merchants are there here dealing in sulphur, well-known merchants? A. There are, I suppose, half a dozen, or perhaps more.

Q. Is there a tolerably steady and constant demand

1005 for sulphur here? A. According to the supply and demand, sir. Sometimes there is a great demand for it, and at other times there is not.

Q. What is the demand; how much does it amount to currently throughout the months in the year? A. The quantity that is sold in a year?

Q. Yes. A. Over 100,000 tons sold in a year.

Q. And is the demand about the same all through the
1006 year in the different months of the year? A. No, sir; the prices would vary according to the supply and demand and whether people had covered their wants. A man can buy a twelve months' supply if he wants, to arrive at certain months.

Re-Direct Examination by Mr. Burlingham:

Q. Mr. Malcomson, didn't you sell the sulphur consigned to you that came by the *Abbazzia* to arrive? A. I couldn't tell you as to that at the moment. I think
1007 probably some of it might have been sold just a little before. Some of it was sold on the market at the time.

Q. You feel sure about that without referring to your books? A. I could not tell you at the moment, sir, for I don't take charge of that. I don't give that my whole attention.

By the Commissioner:

Q. Why so great a difference between June and October in the price of sulphur thirds? A. Well, it hap-
1008 pened to be on account of the war at that time.

By Mr. Burlingham:

Q. What was the price, if you remember, in July and August?

Objected to as immaterial and irrelevant and covered by the bill of lading. Decision reserved.

A. It was much lower than it was in June.

Q. Was it higher than it was in October? A. Oh, yes; it was higher than it was in October.

1009

ALFRED W. JENKINS, a witness called on behalf of the libellant, being duly sworn, testified as follows:

EXAMINED by Mr. Burlingham:

Q. What is your business? A. Brokers and importers.

Q. What firm? A. Parsons & Pettit.

Q. And they do a large business in sulphur, do they? 1010
A. Quite a large business.

Q. And have for how long? A. Well, they are alleged to be the oldest firm in the trade; for the last 25 or 30 years that I know of.

Q. How long have you been in the business? A. I have been in it for 21 or 22 years.

Q. And have you in those years imported sulphur from Sicily and Italy? A. We have.

Q. Are you familiar with the market price of sulphur in New York and thereabouts? A. I would say yes.

Q. And were you and do you know what the market 1011
price of sulphur was about the 3rd of June, 1898, here in New York and hereabouts? A. Best thirds you are speaking about?

Q. Yes. A. Yes.

Q. What was the market price for Sicilian brimstone best thirds in and about June 3rd, 1898, in this port and about here?

Objected to as immaterial and irrelevant and covered by the bill of lading. Decision reserved. 1012

A. We had several inquiries for best thirds at that time, and there wasn't anything available at New York. We canvassed the market thoroughly. There was a lot in Philadelphia, and it was intimated to us we could buy it at $30 a long ton.

Q. Is sulphur always sold by the long ton? A. Yes.

Q. Does that mean 2,240 pounds? A. Yes, sir; we made some sales of best unmixed seconds.

1013 Alfred W. Jenkins.

Q. At about that time? A. I won't say; the latter part of May.

Q. Is there any constant relation between best seconds and best thirds in the market price? A. Yes; there was a difference then of about $3 a ton.

Q. Is that a varying difference? A. Yes, it does vary.

Q. To what extent?

1014 All these questions about the market of seconds and thirds are objected to by Mr. Kirlin on the same grounds as before and decision reserved.

THE COMMISSIONER: We will assume that all this inquiry about the market price in June of sulphur is taken subject to objection.

A. I have known them as far apart as $3 and as close together as 50 cents a ton.

1015 Q. Has there been any wider range than that, $3? A. I hardly think so. I think that is the widest.

Q. I suppose seconds ar better quality than thirds? A. Yes; higher grade.

Q. And there were seconds here at that time? A. About that time.

Q. And what was the market price? A. The latter part of May we made a sale I know. We made a sale on May 25th at $33.50 best unmixed seconds, and I know of a sale that was made on June 4th at $35 for best unmixed seconds.

1016 Q. What was the market price of sulphur in October when the *Abbazzia* arrived here with this sulphur that had been originally shipped on the *Styria?* A. I couldn't tell you that at the moment without looking it up.

Q. Did you attempt to sell this sulphur of Mr. Morgan's that came by the *Abbazzia* in October? A. Yes, I did.

Q. It was put in your hands for sale, was it, after the arrival of the vessel? A. I believe it was.

Q. But you didn't sell it, did you? A. No, we didn't sell it. 1017

Cross-Examination by Mr. Kirlin:

Q. Why not; couldn't you find a buyer? A. Well, it was difficult to find a buyer at that time.

Q. You had some sulphur on the same ship, did you not? A. Yes, we did.

Q. Your firm are one of the libellants here? A. Yes, sir. 1018

Q. And so is Mr. Malcomson? A. That is true.

Q. And on sold your own. Did you have any thirds? A. We did not have any thirds.

Q. What did you have? A. Best unmixed seconds.

Q. And you got the market price for them, I suppose? A. We tried to do the best we could on that point at the time we sold it.

Q. And the usual relation between seconds and thirds I suppose then obtained? A. Yes. 1019

By Mr. Burlingham:

Q. How much did you get for your seconds, do you remember? A. I guess it must be in there. I was trying to think what we got for our seconds. We had 350 tons altogether. It was a little over $20 a ton; it seems to me it was around $21 or $21.50. You have our testimony on the subject.

1020

James L. Morgan, Jr., a witness called on behalf of the libellant, being duly sworn, testified as follows:

Examined by Mr. Burlingham:

Q. You are one of the libellants? A. I am.

Q. And this brimstone that was shipped originally on the *Styria* and finally came forward on the *Abbazzia* was what kind? A. Best thirds.

Q. It arrived here about what date on the *Abbazzia*?

1021 James L. Morgan, Jr.

A. I think about the 4th of October; 3rd or 4th, 1898.

Q. Did you sell it? A. I sold it.

Q. To whom? A. To the Martin Kalbfleisch Chemical Company.

Q. Did you put it in the hands of any brokers to sell? A. I did at first and then withdrew it on the advice of counsel.

Q. You mean before the arrival of the vessel? A.

1022 Before the arrival of the vessel.

Q. What did you get for the sulphur?

Objected to as immaterial and irrelevant and answer taken subject to objection.

A. $18.50 a long ton free on board the boat alongside steamer; the vessel does the discharging into the receiving boat.

Q. Was that the market price then? A. That was the market price.

Q. Do you know of any sales previous to that in a

1023 week or two previous of the same? A. No, I do not. I am not a seller of sulphur; only a consumer, so I have not kept myself posted as to general sales excepting as general information would be concerned in the ruling market price. I am one of the few manufacturers and consumers who import direct. This was not bought through any agent.

Q. How is sulphur usually sold here, Mr. Morgan? A. Do you mean by weight?

Q. No; in what way, auction or private sales or how?

1024 A. Private sales entirely excepting auctions in the case of damaged cargoes.

Q. And is it usually sold after the arrival of the vessel or before? A. That depends largely upon the Sicilian price and the temper of the buyer and his judgment. If brimstone has fluctuated, and it does fluctuate in price like every other commodity——

Q. Did you get a price on this brimstone before it arrived, from any purchaser? A. Did I get a price?

Q. Yes. A. No, sir.

Q. You did make an effort to sell it before it arrived

or took preliminary steps, did you? A. I could have sold it if counsel had so advised.

Q. Could you have got any more for it? A. I think I could have sold that brimstone in July and August at $24 to $26 a ton.

Q. Well, the stipulation by which it was brought forward was not signed until August 12th. Could you have sold it after that for such a price? A. No; the stipulation was signed August 12th?

1026

Q. Yes. A. Counsel advised me not to sell the cargo at first and then of course after the stipulation it was suggested to sell the cargo and the matter was put in a broker's hands and then withdrawn.

Q. Let me remind you, Mr. Morgan, that the ship did not sail from Sicily at all until the 4th September, I think, or thereabout. A. She sailed the 4th of September?

Q. Yes. When did you take steps to have it sold by brokers; before or after she sailed? A. Before she arrived; not before she sailed.

1027

Q. Then it was in September, not August, was it not? A. In September, but in August I had the offer for the goods if we could have given reasonable assurance of the time of shipment. Of course that was not obtainable at that time.

Q. And did you apply to my firm to get permission to sell under the stipulation? A. I did.

By Mr. Kirlin:

Q. You mean in July and August? A. There were two applications—not applications particularly, but conferences with counsel as to the proper course to pursue in this matter. The advice of counsel in both instances was not to sell.

1028

By Mr. Burlingham:

Q. Why should there have been a difference between the price after the vessel arrived and the price you would have got if you had sold it before she arrived? A. Well, a number of steamers did not regard the con-

1029 James L. Morgan, Jr.

ditions of the war as preventing them from carrying sulphur as contraband of war and a large quantity was brought here by other vessels and the market was supplied.

Q. And you mean accordingly the price fell? A. Accordingly the price fell, but during the months of May and June, July and August, or perhaps not August, but in May, June and July, the market was bare and the
1030 chemical trade in a body were buying all that they could purchase at a reasonable figure because they did not know what the future would bring forth.

Cross-Examination by Mr. Kirlin:

Q. What is your manufacturing business, Mr Morgan? A. Manufacturing of chemicals. This is used for the manufacture of sulphuric acid.

Q. Did you use this same kind of sulphur in your business? A. Yes, sir; this was imported for consumption; not for sale.

1031 Q. And you sold it on the advice of counsel rather than consume it yourself? A. Yes.

Q. When did you have it in the hands of brokers, do you recollect? A. I think about—that I can't tell. The date of your letter would determine that; about that period.

Q. Were you purchasing any sulphur about that time? A. No, sir.

Q. Where is the Kalbfleisch factory? A. At Bayonne.

1032 Q. Was it in the hands of brokers after the arrival of the ship? A. No, sir.

Q. You sold direct? A. Sold direct.

Q. To Kalbfleisch after the arrival of the ship? A. Yes, after the arrival of the ship. October 7th delivery was made.

Mr. Burlingham: I will put in this portion of the stipulation entered into between the parties on August 12th, which stipulation is on file and was put in evidence on the trial of the case.

James L. Morgan, Jr. 1033

"1. The claimant shall forward the cargo landed *ex Styria* at port Empedocle on the first available steamer from that port to New York, and shall deliver the same to consignees upon the terms and for the freight specified in the original bills of lading, the consignee to receive the same and to pay the agreed freight on right and true delivery; the goods upon arrival to be sold at current market rates and the proceeds, less the charges incurred, to be credited on account of the damages, if any, recovered in these cases by the libellant." 1034

I offer in evidence letter of Cowen, Wing, Putnam & Burlingham to Messrs. Convers & Kirlin, dated September 12th, 1898, and their reply, dated September 13th, 1898.

Also letter of Messrs. Cowen, Wing, Putnam & Burlingham to Messrs. Convers & Kirlin, dated October 3rd, 1898, and their reply dated October 4th.

Objected to as immaterial and irrelevant.
Marked Exhibits 1, 2, 3 and 4. 1035

LIBELLANT RESTS.

NEW YORK, April 27th, 1899.

MR. KIRLIN: I offer Claimant's Exhibit "1," Morgan, being the bill of lading issued to John Sofiod & Company, covering the sulphur in question in this suit.

I offer the stipulation dated August 12th, 1898, marked *Styria's* Exhibit "C." 1036

Mr. Malcomson testified yesterday that his sulphur, best thirds, realized the current market rate. I now offer in connection with that testimony, for the purpose of showing what his sulphur did bring, *Styria's* Exhibit "G," being a statement of the proceeds of sale of the Malcomson sulphur.

I offer the testimony of Robert Hunter, showing that the invoice value of the Morgan sulphur was $4,279. Hunter, page 7.

Now I don't see how the Commissioner can determine

1037 the case without having before him the depositions and exhibits used at the trial. That is so they can be referred to. I therefore offer the testimony and exhibits that were before the Court at the trial.

MR. BURLINGHAM: I object to these depositions and exhibits being put upon the Commissioner, and state that the counsel should refer specifically to the portions that he wants to put in evidence here.

THE COMMISSIONER: Decision on this offer of the testimony is reserved.

1038 MR. BURLINGHAM: For argument, Mr. Commissioner, I claim that I am entitled to the difference between the value of this sulphur as shown by the sale here in New York in October, and the value of the sulphur in this port as it would have been had it arrived when it ought to have arrived.

THE COMMISSIONER: Namely, in June.

MR. BURLINGHAM: In June.

THE COMMISSIONER: And amounting to how much?

MR. BURLINGHAM: I claim the difference between the
1039 value of the sulphur in this port if it had arrived on the 3rd of June, and the proceeds of its sale when it did arrive, in October, 1898, which difference amounts to $3,410.92. It is made up in this way:

250 tons of sulphur, worth in the market on June 3rd, 1898, $30 a ton.....		$7,500.00
Gross proceeds of sale of 243 tons.....	$4,513.46	
Less freight....	$354.98	
Insurance..	45.00	
1040 Weighing..	24.40	
	$424.38	
		$4,089.08
Which makes a difference of		$3,410.92

That leaves my claim $3,410.92, and that is my argument, that that is the measure of damages.

The Commissioner allows one week for the submission of briefs.

UNITED STATES DISTRICT COURT, 1041

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER S. PARSONS *et al*

vs.

The Steamship "STYRIA," etc.

Before William P. Prentice, Esq., Special Commissioner. 1042

NEW YORK, August 10th, 1899.

Met pursuant to notice.
Present—The COMMISSIONER.

APPEARANCES:

Messrs. BOWERS & SANDS, for the Libellant. 1043
MR. READ, of Counsel.
Messrs. CONVERS & KIRLIN for the Claimant.
MR. KILBRETH, of Counsel.

It is stipulated that the stenographer's fees shall be a taxable cost in the proceeding.

The claimant renews his offer of judgment, made July 25th, 1899.

The libellant agrees that the following statement of damages, based upon the ruling of Judge Brown 1044
in the case of Morgan *v.* The *Styria*, is a correct statement.

Invoice value...			$6,925.00
Proceeds of sale.		$7,402.00	
Freight paid...	$528.00		
Weighing... ..	112.88	640.88	6,761.12
Damages recoverable as above,			$163.88

Counsel for the libellant excepts to the rule of damages fixed by Judge Brown.

1045 Charles J. Kircher.

CHARLES J. KIRCHER, a witness called on behalf of the libellants, being duly sworn, testified as follows:

EXAMINED by Mr. Read:

Q. Mr. Kircher, where do you reside? A. New York City.

Q. What is your business? A. Importing chemicals and brimstone.

1046 Q. You are connected in business with Mr. Malcomson? A. I am.

Q. How long have you been in the brimstone business? A. About twenty years.

Q. Are you familiar with the state of the market in brimstone at different times? A. I am.

Q. Now, about June 1st, 1898, what was the market price in New York of best unmixed seconds?

Objected to as incompetent under the rule fixed by the Court.

1047 Objection sustained. Exception taken.

MR. READ: I offer to show by this witness that the price of best unmixed seconds on or about June 3rd, 1898, in the market in New York, was $35 per ton.

Objected to as incompetent, irrelevant and immaterial.

Objection sustained. Exception taken.

LIBELLANT RESTS.

1048

TESTIMONY CLOSED.

Case stands over to August 17th, 1899, when counsel may submit anything further they desire.

1049

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALFRED S. MALCOMSON vs. The Steamship "STYRIA," etc.	Before William P. Prentice, Esq., Special Commissioner. 1050

NEW YORK, August 10th, 1899.

Met pursuant to adjournment.

Present—THE COMMISSIONER.

APPEARANCES: 1051

Messrs. CONVERS & KIRLIN, for the Claimant.
Mr. KILBRETH, of Counsel.
Messrs. SULLIVAN & CROMWELL, for the Libellant.
Mr. HILL, of Counsel.

It is stipulated that the stenographer's fees shall be a taxable cost in the proceedings.

By a stipulation between the parties the following is agreed to be a correct statement: 1052

Invioce value of sulphur..... $27,246.00
Proceeds of sale..... $28,500.31
Freight paid..... $2,182.50
Weighing 116.12

This shows upon the basis on which the Commissioner made up his report in the Morgan case, which report the Court confirmed, a sum due the libellant of $1,044.31.

1053 It is also stipulated that the *Styria* arrived at this port on the 3rd of June, 1898.

CHARLES J. KIRCHER, a witness called on behalf of the libellant, being duly sworn, testified as follows:

EXAMINED by Mr. Hill:

1054 Q. Mr. Kircher, where do you reside? A. In New York City.

Q. What is your business? A. Importing chemicals and brimstone.

Q. You are connected with the business of Mr. Malcomson? A. I am.

Q. How long have you been in the brimstone business? A. About twenty years.

Q. Are you familiar with the state of the market in brimstone at different times? A. I am.

Q. You knew of this importation by Mr. Malcomson
1055 by the *Styria*? A. I did.

Q. There were two grades of brimstone in that importation, were not there? A. Yes, sir.

Q. Seconds and thirds? A. Best unmixed seconds and best thirds.

Q. Can you give me the relative quantities of each kind in your shipment? A. We had 1,000 tons best unmixed seconds and 500 tons best thirds.

Q. Now, about June 3rd, 1898, what was the market price in New York of best unmixed seconds?

1056 Objected to as incompetent, immaterial and irrelevant.

THE COMMISSIONER: Under the rule of damages fixed by the decision of the Court I will sustain the objection.

Exception taken by Mr. Hill.

Mr. HILL: I offer to prove by this witness that on June 3rd, and in and about that time for some period, the market price of best unmixed seconds in New York was $35 a ton, and the best thirds was between $30 and $31 a ton.

Charles J. Kircher. 1057

Objected to as immaterial, irrelevant and incompetent.

Objection sustained on the ground previously stated. Exception taken.

Mr. HILL: I offer to show that Mr. Malcomson, the libellant, in consequence of the non-delivery of the sulphur by the *Styria*, was compelled to and did purchase in open market the following quantities of brimstone, partly to fulfill his obligations under contracts previously 1058
made for this particular brimstone by the *Styria*, and partly because of the necessities of his own business, but altogether due to the failure to deliver this *Styria* sulphur, viz:

Best thirds, 500 tons, bought in Philadelphia, at $27 per ton.

Best seconds, 200 tons at $31.00 per ton.
200 tons at $32.50 per ton.
400 tons at $35.00 per ton.
200 tons at $35.00 per ton. 1059

Same objection, ruling and exception.

LIBELLANT RESTS.

TESTIMONY CLOSED.

Case stands over to August 17th, 1899, when counsel may submit anything further they desire.

1060

1061

UNITED STATES DISTRICT COURT,

Southern District of New York.

John Munroe *et als.* vs. 1062 The Steamship "Styria."	Before W. P. Prentice, Esq., Commissioner.

New York, September 7th, 1899.

Met pursuant to adjournment.

Appearances:

1063 Messrs. Stern & Rushmore, for the Libellant.
Mr. Regensberger, of Counsel.
Messrs. Convers & Kirlin, for the Claimant.
Mr. Kilbreth, of Counsel.

It is stipulated that the stenographer's fees shall be a taxable cost in the proceeding.

It is stipulated that if the damages be allowed and the balance is to be determined by the rule set out in the decision of the Court in this proceeding; that the invoice value of the libellant's goods is the sum of
1064 $2,329 that the shipment was of 100 tons of brimstone, best unmixed seconds, by the steamship *Styria* from Sicily; that the weighing charges amounted to the sum of $10; that the amount of freight paid for the shipment upon the *Ahhatjia* was $145.50.

Mr. Regensberger: Subject to the objection of the claimant as irrelevant, incompetent and immaterial, the libellant offers the following items as expenses incurred in connection with this cargo. Subject to the objection it is stipulated that there was a shortage of 2 1284/2240 tons, this shortage repre-

senting a loss of $52.75 at the selling price of $20.50 per ton at which the brimstone was sold. The libellant also offers to show that this lot of brimstone sold through Parsons & Pettit, brokers, for which they charged a commission of $19.97, making the net proceeds of the sale $1,977.31. 1065

Objected to.

The Commissioner rules that under the decision of the Court this evidence is immaterial and irrelevant, and therefore sustains the objection both as to the shortage and as to the proceeds of sale upon the arrival of the cargo by the *Abbatjia*. 1066

Exception taken.

Mr. Regensberger: The libellant offers to show that the expenses in Sicily to which the libellants were put by reason of the action of the master of the *Styria* amounted to $49.71, the items of which are as follows:

Lawyer's fees and charges for drawing up protest and other legal advice....	Frs. 150	1067
To charges, &c., for stamps on documents and for serving papers.....	75	
To cable expenses in Sicily.....	43	
To cable expenses from New York....	38	
Total	Frs. 256	

Frs. 256 at 5.15, total.....$49.71

Same objection, ruling and exception. 1068

It is stipulated that no objection is made as to the form of proof.

The libellant offers to prove that the *Styria* on her voyage arrived on the 3rd day of June, 1898, but without this cargo, which was sent later, and that she would have arrived at least five days earlier but for the time consumed taking off the cargo at Port Empedocles.

Objected to. Objection sustained.

1069 D. J. Vlasto.

D. J. VLASTO, a witness called in behalf of the libellant, being duly sworn, testified as follows:

EXAMINED by Mr. Regensberger:

Q. There is some testimony, Mr. Vlasto, that this brimstone was worth about $35 a ton, best unmixed seconds, on June 3rd, 1898? A. On June 3rd, 1898, it was worth $35. I think that on June 3rd that market
1070 price is very fair.

Q. Mr. Vlasto, you are a brother of Solomon J. Vlasto? A. Yes, sir.

Q. Who acted for Munroe & Company in this shipment? A. Yes, sir.

Q. How long have you been in the brimstone importing business? A. I have been with my brother for six years.

By the Commissioner:

1071 Q. How long have you been in the business; we want your knowledge of the business? A. Since 1886.

By Mr. Regensberger:

Q. Do you know the value of brimstone in June, 1898?

THE COMMISSIONER: In this market, in New York.

A. Yes, sir.

1072 Q. What was the market for best unmixed seconds from June 3rd to June 10th, 1898? A. About $35 to $40.

Q. What was the highest to your knowledge between that period? A. In June I think it was about $40.

Q. The lowest? A. As far as I can remember now I think about $35. Of course in May——

Q. I am not asking you about May. Now, the appreciation in the price was due to what? A. On account of the talk of war and the scarcity of brimstone here on account of shipments being stopped.

By the Commissioner:

Q. Did the price fall after June? A. Yes, sir; we imported after that into Canada.

Q. When did the price begin to fall? A. Towards the end of June, when a steamer arrived at Montreal with a cargo.

The foregoing testimony taken subject to the objection.

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Counsel for libellant calls attention to the fact that the pleadings are different in this case from the others, because here conversion is directly charged.

Counsel for the claimant calls attention to the fact that this case was tried in conjunction with the Morgan, Malcomson and Parsons cases, in which the identical facts were in dispute, and all four cases were covered by the terms of the decision.

1075

Mr. Regensberger: I offer to show that on the arrival of the *Styria* on the 3rd or 4th of June, 1898, we tendered the amount of the freight stipulated in the bill of lading in bills and demanded the goods called for by the bill of lading.

Counsel for claimant objects to this testimony as immaterial, but does not dispute the accuracy of the statement.

Objection sustained. Exception taken.

1076

Mr. Kilbreth: The claimant calls attention to the stipulation entered into on the part of all the shippers, under which the cargo was brought forward from Sicily upon the steamship *Abbatjia* upon condition that the freight should be paid in New York on her arrival.

Mr. Regensberger: I object to this as immaterial and irrelevant, and call attention to the fact that the purpose and intent of the stipulation, which stipulation was formulated after a communication was had between myself personally and the attorneys for the

claimant, upon the theory and with the understanding that no advantage to anyone, and especially the claimant, was to be derived from keeping that brimstone in an Italian port, and that if brought here the proceeds could be used in diminishing the damages if we were right, and affording a relief to all the parties if we were wrong.

Mr. KILBRETH: I object to the construction placed upon the stipulation by Mr. Regensberger.

1078 THE COMMISSIONER: I will admit the stipulation and it will speak for itself.

Adjourned to Friday, September 8th, 1899, at 1.30 o'clock P. M.

Exhibit 1.

ESEK COWEN
1079 HENRY T. WING
HARRINGTON PUTNAM
CHARLES C. BURLINGHAM
EVERETT MASTEN
JAMES FORRESTER

Law Offices of

COWEN, WING, PUTNAM AND BURLINGHAM,

45 William Street.

NEW YORK, September 12th, 1898.

1080 *Styria.*

Messrs. CONVERS & KIRLIN,

DEAR SIRS:

We understand that the *Styria* left Girgenti August 6th and has not been reported as passing Gibraltar. We are informed that probably a better sale of the cargo can be made if it is put in the hands of brokers now for a sale to arrive, and if you will authorize our clients, under the stipulation of August 12th, 1898, to do this, we think it will be to the advantage of all interested.

Very truly yours,

COWEN, WING, PUTNAM & BURLINGHAM,

Exhibit 2.

1081

Cablegrams: "Vasefield, New York."
Codes: Watkins' and Scott's.

CONVERS & KIRLIN.

5 Beekman Street,
NEW YORK, September 13, 1898.

Messrs. COWEN, WING, PUTNAM & BURLINGHAM,
45 William Street, New York.

1082

S/S *Styria.*

DEAR SIRS:

Your favor of yesterday is received.

Under the circumstances, and considering we have forwarded to our clients the stipulation of August 12th, and that they have agreed to its terms, we are not at liberty to depart from the text and consent to a sale of the cargo to arrive, instead of upon arrival, as provided by the first paragraph of the agreement.

As the course you suggest is, to a certain extent, 1083
speculative, we think you will readily perceive why we should be reluctant to follow it, although we are always desirous to consent to any proceeding that will have a tendency to minimise loss to either side.

Regretting our inability to comply with your wishes herein, we remain,

Yours very truly,
CONVERS & KIRLIN.

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Exhibit 3.

Esek Cowen
Henry T. Wing
Harrington Putnam
Charles C. Burlingham
Everett Masten
James Forrester

Law Offices of
Cowen, Wing, Putnam and Burlingham,
45 William Street.

1086 New York, October 4th, 1898.

Musgrave v. S. S. *Styria*.

Messrs. Convers & Kirlin,
Dear Sirs:

Our clients, Messrs. James L. Morgan & Company, have made every effort pursuant to the stipulation entered into herein August 12th, to sell the consignment of Licata brimstone best thirds originally shipped on the S. S. *Styria* and which arrived here in the S. S. 1087 *Abbazia*. The best offer they have been able to obtain is $18.50 per ton from Alfred S. Malcomson, which we understand was the market price upon arrival of the *Abbazia*, for brimstone of this quality. Please let us know at once whether you and your clients have any objections to our selling our consignment to Alfred S. Malcomson at the price stated $18.50 per ton, or taking it ourselves, upon the understanding that $18.50 per ton was the market price on arrival.

Yours very truly,

1088 Cowen, Wing, Putnam & Burlingham,
Proctors for James L. Morgan & Co.

1089

Exhibit 4.

Cablegrams: "Vasefield, New York."
Codes: Watkins' and Scott's.

CONVERS & KIRLIN.

5 Beekman Street,
NEW YORK, October 4, 1898.

Messrs. COWEN, WING, PUTNAM & BURLINGHAM,
45 William Street, New York.

1090

S/S *Styria* (Morgan).

DEAR SIRS:

Your letter of to-day is received.

We must insist, in behalf of our clients, that Messrs. James L. Morgan & Co. strictly fulfill the terms of the stipulation heretofore entered into by them with the owner of this steamer, and dated August 12, 1898.

Where the stipulation is silent, the owner of the *Styria* demands that your clients act strictly within the limit of the law.

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We are not authorized to stipulate as to the market value of the sulphur, in the absence of its sale, according to agreement, nor to waive any of the rights of the owner of the *Styria* in the premises. Your clients must do as the law directs.

Yours very truly,
CONVERS & KIRLIN,
Proctors for S/S *Styria*.

1092

1093 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN, JOHN M. GOETCHIUS, JAMES L. MORGAN, JR., HENRY K. GOETCHIUS and LANCASTER MORGAN

1094

AGAINST

The Steamship "STYRIA," her engines, etc.

To the Honorable ADDISON BROWN, Judge of the United States District Court:

1095 By the interlocutory decree herein, it having been referred to the undersigned as Special Commissioner to ascertain and compute the amount of damages to the libellant and to report the same to the Court with all convenient speed:

I, William P. Prentice, as such Special Commissioner, do respectfully report as follows: That I have been attended by the respective parties, and have taken the evidence offered by them, and all the proceedings had before me are herewith annexed.

1096 The inquiry in this case relates to the damages which the libellant may recover under the decision of this Court and the rules therein adopted for the guidance of the Commissioner, upon 3,250 Sicilian cantars of sulphur shipped by John Sofio & Co., consigned to Brown Brothers & Co. by Bill of Lading dated April 23rd, 1898, signed by Antonio G. Scopinich, who was master of the S. S. *Styria*. This sulphur was of the quality of best "Thirds," and was shown in the evidence taken herein to have been worth $30 per ton, on June 3rd, 1898, in New York, and for some time there-

after, and the amount is otherwise given in the argument of counsel, and also in the deposition of Captain Scoponich, as 250 tons, and therefore would have been of the value, if properly transported, and delivered, of $7,500 less the amount of freight to be paid, which by stipulation entered on the minutes was $354.98. The same stipulation admitted the arrival of the *Styria* in the port of New York from Italy and Sicilian ports on or about the 3rd day of June, 1898. The sulphur, after loading had been discharged from April 27th to May 7th and stored in a warehouse at Empedocle in Sicily, which is the port of the town of Girgenti, where the sulphur was shipped, because of the apprehensions of the master of the vessel and of peremptory instructions received by him from his owners, war having been declared between Spain and the United States, and the rumor prevailing that sulphur would be treated as contraband of war. This action on the part of the ship was held by the Court to be unjustifiable, and the immunity therefor under the bill of lading, under the clauses of the same, referred to by the master and by the claimant was refused, on the ground that the bill of lading was inapplicable to the situation disclosed. The Court has said in relation to it:

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"I must find therefore that the ship was not justified by clauses (*a*) and (*b*) of the bill of lading above quoted, in discharging and storing the cargo on account of the shippers—as she did between April 27th and May 7th; that by the tenth of May there was a reasonable assurance that it would be safe to go on with the voyage, and that this was not an unreasonable time for the ship to wait under the facts and circumstances currently known in Sicily at that time."

1100

The opinion of the Court further states:

"The defendant also invokes the liberty to tranship under clause (C) and the bill of lading above quoted. This is a clause which is no doubt designed for the benefit of the ship alone in any emergencies that may call for the exercise of the option given. * * * In this case, however, the discharge was stated by the master at the time to be based upon his rights under clauses (*a*)

and (*b*) only, and the various clauses of the agreement subsequently made between the parties under which the cargo was brought forward seem based upon the same assumption."

Rights under this clause of the bill of lading are therefore also refused to the ship. There having been an unjustifiable refusal on the part of the master to continue the voyage, which, the evidence taken shows, would have enabled him to land his cargo in New York on or about the third day of June, 1898, and his contract having been broken at its very inception, it would seem that none of the clauses of the bill of lading could be availed of for the benefit of the ship, but the ordinary rule of damages for breach of contract of carriage by the carrier must prevail. It has been frequently held that the carrier is liable not simply on contract, but also in tort, for each item of loss, and that clauses in bills of lading should be construed not as a condition of liability, but according to their natural import and the evident intention of the parties. Thus it was held in Pearse against Quebec S. S. Co. (24 Fed. R., 285). Certainly no agreement between the parties can be presumed to make the bill of lading applicable to any act of conversion, nor to a deliberate refusal to perform. No new contract could be made between the parties by the Court wherein some of the reciprocal obligations of the parties should be disallowed while the limitation of the original contract were applied and enforced. In these respects this case differs greatly from those cited upon the reference of the *Hadji* (18 Fed. R., 459), *Lydian Monarch* (23 Fed. R., 298) and the *Aline* (25 Fed. R., 562), where the losses had occurred within the terms of the bills of lading, the contract of shipment having been performed, but the carrier held for damages incident to it.

This situation was, however, apparently changed in some respects by stipulation entered into between the parties dated August 12th, 1898, referred to in the opinion of the Court, and in evidence on this reference. In consequence the sulphur was reshipped by the *Abazzia*, a vessel belonging to the same owners, and arrived in New York, and was sold in October,

1898—243 tons, and 2,174 lbs. all of the original shipment of 250 tons, brought over realising at $18.50 a ton—the market price in October—the sum of $4,513.-46. The freight charges paid under the stipulation were $354.98, and the charges for weighing $24.40. The parties had agreed that the consignee should pay the freight on delivery, and that the goods should be sold at current market rates, and the proceeds of the goods less charges incurred should be credited on account of the damages, if any, recovered by the libellants. There was no dispute that the charge for weighing, was to be allowed, and the question of the allowance of freight appears to have been decided by the Court as follows: 1105 1106

"The consignees are entitled to deduct the freight paid by them from the gross proceeds of the sale of the brimstone as a part of the expenses of realizing the moneys derived from it."

The shrinkage from 250 tons to 243 tons, 2,174 lbs. is to be accounted for in the first place by a deduction made at the storage warehouse at Empedocle, Sicily, of one per cent. (1%) which the master of the *Abazzia* states he was compelled to leave there as he says, according to the custom of the port, which he states as follows: 1107

(Page 15) "I was obliged to pay storage 1% on the quantity deposited, in kind. The custom of the port is to take it in kind."

And secondly, according to the same witness (page 20 of his deposition), in every transhipment from or into lighters, as was required at that port, there is a loss of one to two per cent.; he says between one and a half and two per cent. of the sulphur—it being somewhat dependent upon the strength of the wind. The sulphur was transferred from the lighter to the steamer in baskets. After the 250 tons had been loaded on the steamship *Styria* it had been unnecessarily unloaded, and then again it had to be loaded upon the *Abazzia*, making a loss of about three (3) per cent. in these two handlings, which, with the one per cent. retained in Sicily, according to the custom of the court, upon the storage 1108

1109 in the warehouse, would account for the loss, and under the decision of this case it would seem that that loss must be borne by the ship. If the carrier were to be held for conversion, independent of the limitation of his liability in the bill of lading to invoice value, then the value would be determined at the port of arrival, and he would be entitled to freight. A different rule of damages, however, appears to be necessary in this case, and one to which many of the facts heretofore set forth are not pertinent. They may become of more
1110 importance on a review of all the questions involved in the present contention. The Court has held that the shipowner

"is not to be liable in any case for more than the invoice or declared value of the goods."

The invoice value of the goods was proven at $4,279 or 22,174 lire (Hunter's deposition, page 7), and

"the consignees are entitled to deduct the freight paid by them from the gross proceeds of the sale of
1111 the brimstone as a part of the expenses of realizing the moneys derived from it, and in addition the cost of weighing, $24.40."

If the freight be deducted as a charge, the libellant's damages would amount to $144.92.

This is made up as follows:

Invoice value....			$4,279.00
Proceeds of sale.		$4,513.46	
Weighing..	$24.40		
Freight..... ...	354.98	379.38	4,134.08
1112			
Balance			$144.92

This sum of $144.92, with interest thereon from the 3rd day of June, 1898, I have computed, and hereby report to the Court to be the damages of the libellant.

All of which is respectfully submitted.

Dated New York, June 29th, 1899.

W. P. PRENTICE,
Commissioner.

[Endorsed:]—Commissioner's Report filed June 30, 1899.

1113

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER L. PARSONS

AGAINST

S.S. "STYRIA," her tackle, etc. 1114

To the Honorable ADDISON BROWN, Judge of the United States District Court:

By the interlocutory decree herein, it having been referred to the undersigned as Commissioner, to ascertain and compute the amount of damages to the libellant and to report the same to the Court with all convenient speed, 1115

I, William P. Prentice, as such Commissioner, do respectfully report as follows: That I have been attended by the respective parties, and have taken the evidence offered by them, and all the proceedings had before me are herewith annexed.

The libellant had sulphur on board the steamship *Styria* in Sicily which should have arrived with that vessel in New York June 3rd, 1898.

It was, however, left by that vessel to come forward some months later, when the libellant paid charges upon 1116
it of weighing, $112.88, and freight, $528.00, making the expenses $640.88.

The invoice value of this shipment was $6,925.00, to which should be added under the rule of the Court in this case the expenses, $640.88, totalling $7,565.88.

The sulphur was sold on arrival and brought $7,402.

Deducting the proceeds of sale from the invoice value and the expenses found as above, and the balance is $163.88.

Evidence of the value of this sulphur, best unmixed

1117 "Seconds" in the New York market on June 3rd, 1898, was, under objection and exception, excluded, as not within the rule of damages established by the Court.

I have therefore computed the sum of One hundred and sixty-three dollars and eighty-eight cents, and hereby report the same to the Court to be the damages of the libellant, with interest from June 3rd, 1898.

All of which is respectfully submitted.

Dated New York, August 21st, 1899.

W. P. PRENTICE,

1118 Comr.

[Endorsed:]—Commissioner's Report, filed Aug. 31, 1899.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

1119

ALFRED S. MALCOMSON

AGAINST

The Steamship "STYRIA," her engines, etc.

1120 To the Honorable ADDISON BROWN, Judge of the United States District Court:

By the interlocutory decree herein, it having been referred to the undersigned as Commissioner, to ascertain and compute the amount of damages to the libellant, and to report the same to the Court with all convenient speed,

I, William P. Prentice, as such Commissioner, do respectfully report as follows, that I have been attended by the respective parties and have taken the evidence of-

fered by them, and all the proceedings had before me 1121
are herewith annexed.

The libellant had on board the steamship *Styria* in Sicily in 1898 one thousand tons best unmixed "Seconds" and five hundred tons best "Thirds" of brimstone.

The *Styria* did not transport this cargo to New York, but arrived in this port June 3rd, 1898.

The sulphur came by a later shipment, on which the libellant paid $2,182.30 freight, and weighing, $116.12. The sulphur was sold in this market on arrival and 1122
brought $27,246.00. The invoice value was $28,500.31.

Under the rule of damages fixed by the decision of the Court evidence was refused of the value of sulphur in this market on June 3rd, 1898, and exception was taken.

The damages of the libellant were as follows, after deducting the freight and weighing expenses from the proceeds of sale:

Proceeds of sale.....		$28,500.31	1123
Freight $2,182.50			
Weighing	116.12	2,298.62	
The balance is.....		$26,201.69	
And deducted from the invoice value		27,246.00	
Shows the loss.....		$1,044.31	

This sum of one thousand and forty-four dollars and 1124
thirty-one cents with interest thereon from the 3rd day of June, 1898, I have computed and hereby report to the Court to be the damages of the libellant.

All of which is respectfully submitted.

Dated New York, August 21, 1899.

W. P. Prentice,
Commissioner.

[Endorsed:]—Commissioner's Report filed August 21, 1899.

1125

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERIC DE REISET,

1126 AGAINST

S. S. "STYRIA," her tackle, &c.

To the Honorable ADDISON BROWN, Judge of the United States District Court:

By the interlocutory decree herein, it having been referred to the undersigned as Commissioner, to ascer-
1127 tain and compute the amount of damages to the libellant, and to report the same to the Court with all convenient speed.

I, William P. Prentice, as such Commissioner, do respectfully report as follows: That I have been attended by the respective parties, and have taken the evidence offered by them, and all the proceedings had before me are herewith annexed.

The libellant had one hundred tons of sulphur on board the steamship *Styria* in Sicily, which should have
1128 arrived with that vessel in New York, June 3rd, 1898.

It was, however, left by that vessel to come forward some months later, when the libellants paid charges upon it of

Weighing	$10.00
Freight	145.00
	$155.00

The invoice value of the shipment was..	$2,329.00	1129
To which should be added, under the rule of the Court in this case, the expenses..	155.00	
	$2,484.90	
The sulphur was sold on arrival and brought	$1,997.08	
Deducting the proceeds of sale from the invoice value, and the expenses found as above, and the balance is.....	$487.02	1130

Evidence of the value of this sulphur, best unmixed seconds, in the New York market, at the time the *Styria* was due, was, under objection and exceptions, excluded, as not within the rule of damages established by the Court. And the same ruling was made as to offers of evidence of shortage and demands made for the goods on the arrival of the *Styria* on the 3rd of June, 1898.

I have therefore computed this sum of four hundred eighty-seven and 2/100 ($487.02) dollars, and hereby report the same to the Court, to be the damages of the libellant, with interest from June 3, 1898. 1131

All of which is respectfully submitted.

Dated New York, September 27th, 1899.

(Sd.) W. P. Prentice,
Commissioner.

[Endorsed:]—Commissioner's Report filed October 9, 1899. 1132

1133 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN *et al.*,

vs.

1134 The "STYRIA."

The libellants except to the report of the Special Commissioner filed herein June 30th, 1899, on the following grounds:

I.—Said Commissioner reports the damages sustained by the libellants at the sum of $144.92.

1135 II.—Said Commissioner does not report said damages to be at least the sum of $2,986.54.

III.—Said Commissioner adopted an erroneous method of assessing the damages, the true measure of damages being the difference in the value of the sulphur at the time and in the place it should have been delivered, viz.: June 3d, 1898, at New York, and at the time of its actual delivery in October, 1898.

1136 IV.—Said Commissioner erred in holding that the clause in the bill of lading limiting liability to the invoiced or declared value of the goods was applicable to the case.

V.—If said clause does apply, said Commissioner erred in his interpretation of it, the true meaning of the clause being that cargo owners may recover up to, but not beyond, the invoice value of their goods.

Dated June 30th, 1899.

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Libellants.

To Messrs. Convers & Kirlin,
Proctors for Claimant. 1137

[Endorsed:]—Libellant's exceptions to Commissioner's Report, filed July 5, 1899.

UNITED STATES DISTRICT COURT,

Southern District of New York. 1138

James L. Morgan *et al.*,
Libellant,

against

The Steamship "Styria," Antonio G. Scopinich,
Claimant. 1139

The claimant excepts to the report of the Commissioner herein for the following reasons:

First.—Because the Commissioner added the freight paid by the libellants to the invoice value of the goods in determining the amount of the ships liability under the bill of lading.

Second.—Because the Commissioner held that freight was a charge in the sense of the stipulation dated August 12th, 1898, in determining the amount of charges to be deducted from the proceeds of sale and in determining the amount to be credited under said stipulation on account of the damages to be recovered by the libellants herein against the steamship. 1140

Third.—Because the Commissioner failed, omitted and refused to hold that the libellants were bound to pay the freight absolutely under the stipulation of August 12th, 1898, and that after such payment the damages of the libellants should be limited to the invoice value

1141 of the goods, less the proceeds of the sale thereof, wholly irrespective of the amount paid by the libellants for freight.

FOURTH.—Because the Commissioner failed, omitted and refused to hold that the libellants were not entitled to recover anything as damages herein.

FIFTH.—Because the Commissioner has found that the libellants were entitled to recover damages herein in the sum of $144.92, instead of finding and holding
1142 that the libellants were not entitled to recover anything.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's exceptions to Commissioner's report, filed July 5, 1899.

1143 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER L. PARSONS and another

AGAINST

1144 Steamship "STYRIA," her tackle, etc.

The libellants above named except to the report of the Commissioner herein assessing the damages of the libellants as follows:

I.—They except to the said report for the reason that the said Commissioner failed to adopt the true rule of damages in assessing the libellants' damages.

II.—They except to the said report for the reason

that the said Commissioner held the libellants bound by 1145
that clause of the bill of lading limiting the damages to the invoice value of the libellants' brimstone.

III.—They except to the said report for the reason that the said Commissioner refused to allow the libellants the difference between the price actually received for the goods (in mitigation of damages) and the market price thereof on or about June 5, 1898, when the *Styria* arrived.

New York, September 8, 1899.

BOWERS & SANDS, 1146
Proctors for Libellants,
31 Nassau Street,
New York City,
N. Y.

To the Clerk of the United States District Court.

Messrs. CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Libellants' exceptions to Commissioner's report, filed September 28, 1899. 1147

1148

1149 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

1150 The Steamship "STYRIA," her engines, etc., SCOPINICH,
Claimant.

The claimant excepts to the report of the Commissioner herein for the following reasons:

FIRST.—Because the Commissioner added the freight paid by the libellant to the invoiced value of the goods
1151 in determining the amount of the ship's liability under the bill of lading.

SECOND.—Because the Commissioner held that freight was a charge in the sense of the stipulation dated August 12th, 1898, in determining the amount of charges to be deducted from the proceeds of sale and in determining the amount to be credited under said stipulation on account of the damages to be recovered by the libellant herein against the steamship.

1152 THIRD.—Because the Commissioner did not hold that the libellants were bound to pay the freight absolutely under the stipulation of August 12th, 1898, and that after such payment the damages of the libellant should be limited to the invoice value of the goods less the proceeds of the sale thereof, wholly irrespective of the amount paid by the libellant for freight.

FOURTH.—Because the Commissioner did not hold that the libellants were not entitled to recover anything as damages herein.

FIFTH.—Because the Commissioner has found that 1153
the libellant is entitled to recover damages herein in the sum of $163.88 instead of finding and holding that the libellant was not entitled to recover anything.

Respectfully submitted,

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's exceptions to Commissioner's report, filed September 9, 1899.

1154

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALFRED S. MALCOMSON

vs. 1155

Steamship "STYRIA," her engines, etc.

LIBELLANT'S EXCEPTIONS.

Alfred S. Malcomson, the libellant, excepts to the report of the Commissioner appointed to assess damages herein upon the following grounds:

1156

I.—That said Commissioner reports the damages sustained by libellant as being only the sum of $1,044.31, with interest from June 3rd, 1898.

II.—That said Commissioner erred in rejecting the testimony offered by the libellant to show the value of the sulphur at the time when it should have reached New York and the special damage sustained by the libellant in consequence of its not arriving.

III.—That said Commissioner erred in holding that

1157 the damages recoverable by libellant are only the difference between the net proceeds of sale of the sulphur and the invoice value of the same.

IV.—That said Commissioner erred in holding that the clause in the bill of lading limiting liability to the invoiced value of the goods was applicable to this cause.

V.—That said Commissioner erred in his interpretation of said clause and in not holding that the true intent and meaning thereof was only to limit the total amount
1158 recoverable by libellant.

SULLIVAN & CROMWELL,
Proctors for Libellant.

[Endorsed:]—Libellant's exceptions to Commissioner's report, filed August 31, 1899.

UNITED STATES DISTRICT COURT,

1159

SOUTHERN DISTRICT OF NEW YORK.

ALFRED S. MALCOMSON,
Libellant,

AGAINST

The Steamship "STYRIA," her engines, etc., SCOPINICH,
1160 Claimant.

The claimant excepts to the report of the Commissioner herein for the following reasons:

FIRST.—Because the Commissioner added the freight paid by the libellant to the invoiced value of the goods in determining the amount of the ship's liability under the bill of lading.

SECOND.—Because the Commissioner held that

freight was a charge in the sense of the stipulation dated August 12th, 1898, in determining the amount of charges to be deducted from the proceeds of sale and in determining the amount to be credited under said stipulation on account of the damages to be recovered by the libellant herein against the steamship. 1161

Third.—Because the Commissioner did not hold that the libellants were bound to pay the freight absolutely under the stipulation of August 12th, 1898, and that after such payment the damages of the libellant should be limited to the invoice value of the goods less the proceeds of the sale thereof, wholly irrespective of the amount paid by the libellant for freight. 1162

Fourth.—Because the Commissioner did not hold that the libellants were not entitled to recover anything as damages herein.

Fifth.—Because the Commissioner has found that the libellant is entitled to recover damages herein in the sum of $1,044.31 instead of finding and holding that the libellant was not entitled to recover anything. 1163

Respectfully submitted,

Convers & Kirlin,

Proctors for Claimant.

[Endorsed:]—Claimant's exceptions to Commissioner's report, filed September 9, 1899.

1164

1165

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERICK DE REISET,

Plaintiffs,

1166

AGAINST

The Steamship "STYRIA," her tackle, etc.,

Defendant.

LIBELLANTS' EXCEPTIONS.

1167 John Munroe, Edgar Lockwood, Henry W. Munroe and Frederick de Reiset, the libellants, except to the report of the Commissioner appointed to assess the damages herein upon the following grounds:

FIRST.—That said Commissioner reports the damages sustained by libellants as being only the sum of Four hundred and eighty-seven and 2/100 dollars ($487.02) with interest from June 3rd, 1898.

SECOND.—That said Commissioner erred in rejecting
1168 the testimony offered by the libellants to show the value of the sulphur at the time when it should have reached New York, and the said damage sustained by the libellants in consequence of its arriving.

THIRD.—That said Commissioner erred in holding that the damages recoverable by libellants are only the difference between the net proceeds of sale of the sulphur and the invoice value of the same.

FOURTH.—That said Commissioner erred in holding that the clause in the bill of lading limiting liability to

the invoice value of the goods, was applicable to this cause. 1169

Fifth.—That said Commissioner erred in his interpretation of said clause, in not holding that the true intent and meaning thereof was only to limit the total amount recoverable by libellants.

Dated New York, October 6th, 1899.

Stern & Rushmore,
Procs. for Libellants.

1170

[Endorsed:]—Libellants' Exceptions to Commissioner's report, filed October 9, 1899.

UNITED STATES DISTRICT COURT,

Southern District of New York.

1171

John Munroe *et al.*,
Libellants,

against

The Steamship "Styria," Antonio G. Scopinich,
Claimant.

1172

The claimant excepts to the report of the Commissioner herein for the following reasons:

First.—Because the Commissioner added the freight paid by the libellant to the invoiced value of the goods in determining the amount of the ship's liability under the bill of lading.

Second.—Because the Commissioner held that freight was a charge in the sense of the stipulation dated August 12th, 1898, in determining the amount of

1173 charges to be deducted from the proceeds of sale and in determining the amount to be credited under said stipulation on account of the damages to be recovered by the libellant herein against the steamship.

THIRD.—Because the Commissioner did not hold that the libellants were bound to pay the freight absolutely under the stipulation of August 12th, 1898, and that after such payment, the damages of the libellants should be limited to the invoice value of the goods less
1174 the proceeds of the sale thereof, wholly irrespective of the amount paid by the libellants for freight.

FOURTH.—Because the Commissioner did not hold that the libellants were not entitled to recover anything as damages herein.

FIFTH.—Because the Commissioner has found that the libellants are entitled to recover damages herein in the sum of $487.02 instead of finding and holding that the libellants were not entitled to recover anything.

1175 New York, Oct. 11, 1899.

Respectfully submitted,
CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's Exceptions to Commissioner's report, filed Oct. 11, 1899.

1176

OPINION ON EXCEPTIONS TO COMMISSIONER'S REPORT. 1177

BROWN, J.:

By the contract of the bill of lading the invoice value is the basis of settlement of any loss or damage; and a construction seems to me impossible and in fact absurd that would call for the same payment on a partial loss as upon a complete destruction of the goods. Hence the special agreement made pending the action further limits recovery.

1178 No freight was due except upon delivery at New York. Clause 2 of the stipulation recognized the freight as a lien incurred and charged upon the goods by the transportation. It was immaterial whether this lien for freight was paid before or after the sale. If not paid before sale it must have been paid *out of the proceeds* of sale, and if paid by the consignee before sale, it was paid as a lien or charge incurred upon the goods, in accordance with both clauses of the stipulation and hence to be deducted from the amount of proceeds of sale to be credited to the claimant against 1179 the whole damages, *i. e.*, the invoice value as limited by the B/L which was adopted in the stipulation.

The *Hadji*, 18 F. R., 489; affd. 20 F. R., 875; approved in.
The *Lydian Monarch*, 23 F. R., 298, 300.

There was no conversion of the goods; only a mistaken theory of the contract rights and duties. It was the owner's duty to transport the goods and the consignees to pay the freight and that was ultimately done 1180 by each.

July 7, 1899.

Commissioner's Report affirmed.

1181

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, Borough of Manhattan, City of New York, on the 17th day of July, 1899.

Present—Hon. ADDISON BROWN, Judge.

1182

JAMES L. MORGAN, JOHN M. GOETCHIUS, JAMES L. MORGAN, Jr., HENRY K. GOETCHIUS and LANCASTER MORGAN,

AGAINST

The Steamship "STYRIA," her engines, etc.

1183

The report of the Commissioner to whom it was referred to ascertain the damages herein having been filed wherefrom it appears that said damages amount to $144.92, and exceptions to said report having been filed by both parties hereto, and said exceptions having been overruled after argument now it is

Ordered that said report be and the same hereby is in all respects confirmed.

1184 And it is ordered, adjudged and decreed that the libellants above named recover herein the sum of $144.92 as damages, and the further sum of $9.78 as interest thereon from the 3d day of June, 1898, and the further sum of $125.78 costs as taxed, making in all the sum of $280 48/100 for which sum the steamship *Styria*, her engines, etc., are hereby condemned.

And it is further ordered that unless this decree be satisfied or proceedings thereon be stayed on appeal within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for

costs and value on the part of the claimant cause the 1185
engagements of their stipulations to be performed or show cause why execution should not issue against their goods, lands and credits to satisfy the same.

ADDISON BROWN.

[Endorsed:]—Final decree—filed August 5, 1899.

At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 26th day of September, 1899. 1186

Present—Hon. ADDISON BROWN, Judge.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

The Steamship "STYRIA," her tackle, etc.,
Claimant. 1187

Upon reading and filing the report of William P. Prentice, Esq., the Commissioner to whom it was referred by order of this Court to ascertain and compute the amount of damages to the libellant herein, which report was filed with the Clerk of this Court, wherefrom it appears that said damages amounted to the sum of One hundred and sixty-three and 88/100 dollars ($163.88) on the 3rd day of June, 1898, and upon reading and filing the exceptions of both parties to said report, and upon all the pleadings and proceedings herein, and after hearing counsel in favor of said exceptions, it is 1188

1189 Ordered that the said exceptions filed by both parties be and the same hereby are in all respects overruled.

And it is further ordered that the said report be and the same hereby is in all respects confirmed.

And it is further ordered, adjudged and decreed that the libellant above named recover herein the sum of One hundred and sixty-three and 88/100 dollars ($163.88) as damages, and the further sum of Twelve 94/100 dollars ($12.94) as interest thereon from the 3rd day of June, 1898, and the further sum of Fifty-eight 54/100
1190 dollars ($58.54) taxed as costs herein, making in all the total sum of Two hundred thirty-five 36/100 dollars ($235.36), for which sum the steamship *Styria*, her tackle, etc., are hereby condemned.

And it is further ordered that, unless this decree be satisfied and all proceedings thereon be stayed on appeal within the time and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value on the part of the claimant cause the engagements of their stipulations to be performed or show
1191 cause why execution should not issue against their goods, lands and credits to satisfy the same.

ADDISON BROWN.

Approved as to form.

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Final decree, filed Oct. 4, 1899.

1192

At a Stated Term of the District Court of the United States, Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 17th day of July, 1899. 1193

Present—Hon. Addison Brown, Judge.

Alfred S. Malcomson

1194

against

S.S. "Styria," her engines, etc.

The report of the Commissioner to whom it was referred to ascertain the damages herein having been filed, wherefrom it appears that said damages amount to the sum of $1,044.31, and exceptions to said report having been filed by both parties herein, and said exceptions having been overruled after argument, it is now 1195

Ordered, that said report be, and the same is hereby in all respects confirmed, and it is

Ordered, adjudged and decreed that libellant above named recover herein the sum of $1,044.31, as damages, and the further sum of $82.50, as interest thereon from the third day of June, 1898, and the further sum of $59.30, being the costs as taxed, making in all the sum of $1,186.11, for which sum the SS. *Styria,* her engines, etc., are hereby condemned. 1196

And it is further ordered, that unless this decree be satisfied, or proceedings thereon be stayed on appeal within the time, and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value on the part of the claimant cause the engagements of their stipulations to be performed, or show cause why execution should not issue against their goods, lands and credits to satisfy the same.

Dated Oct. 5, 1899.

Addison Brown.

[Endorsed:]—Final decree, filed October 9, 1899.

1197 At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court House, Borough of Manhattan, City of New York, on the 27th day of October, 1899.

Present—Hon. ADDISON BROWN,
Justice.

1198 JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERICK DE REISET,

Plaintiffs,

AGAINST

The Steamship "STYRIA," her tackle, etc.,

1199 Defendant.

The report of the Comissioner to whom it was referred to ascertain the damages herein, having been filed, wherefrom it appears that the said damages amount to Four hundred and eighty-seven and 2/100 dollars ($487.02) with interest from the 3rd day of June, 1898; and exceptions to said report having been filed by both parties hereto; and said exceptions having
1200 been overruled upon argument,

Now, it is ordered, that the said report be, and the same is hereby in all repects confirmed; and

It is ordered, adjudged and decreed that the libellants above named recover herein the sum of Four hundred and eighty-seven and 2/100 dollars ($487.02) as damages; and the further sum of Thirty-nine and 20/100 dollars ($39.20), as interest thereon from the 3rd day of June, 1898; and the further sum of thirty-seven and 77/100 dollars ($37.77), costs as taxed, making in all the sum of Five hundred and sixty-three and

99/100 dollars ($563.99), for which the steamship 1201
Styria, her tackle, etc., are hereby condemned; and

It is further ordered, that unless this decree be satisfied, or proceedings therein be stayed on appeal, within the time, and in the manner prescribed by the rules and practice of this Court, the stipulators for costs and value on the part of the claimant, cause the engagements of their stipulations to be performed, or show cause why execution should not issue against their goods, lands and credits to satisfy the same.

Enter,

1202

ADDISON BROWN.

Notice of settlement waived. No objection to form of decree.

CONVERS & KIRLIN.

[Endorsed:]—Final decree.—Filed October 27, 1899.

1203

1204

1205

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AUSTRO-AMERICANA STEAMSHIP COMPANY

AGAINST

1206 3250 Cantars of Brimstone owned by JAMES L. MORGAN *et al., ex* S. S. "ABBAZIA."

SIRS:

Please take notice that the libellant appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered in the above entitled cause in this Court in favor of the claimant, on
1207 or about the 12th day of April, 1899.

Yours, &c.,

CONVERS & KIRLIN,
Proctors for Libellant.

To SAMUEL H. LYMAN, Esq.,
Clerk.

Messrs. COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Claimant.

Dated New York, April 22nd, 1899.

1208 [Endorsed:]—Libellants' notice of appeal.—Filed April 22, 1899.

UNITED STATES DISTRICT COURT, 1209

SOUTHERN DISTRICT OF NEW YORK.

AUSTRO-AMERICANA STEAMSHIP CO.,
Libellant,

AGAINST

4550 Cantars of Brimstone owned by SCHUYLER L. PARSONS, *ex* S. S. "ABBAZIA." 1210

SIRS:

Please take notice that the libellant herein appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered in the above entitled cause on or about October 4th, 1899. 1211

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Libellant.

To SAMUEL H. LYMAN, Esq.,
Clerk.
Messrs. BOWERS & SANDS,
Proctors for Claimant.

Dated New York, October 11th, 1899.

[Endorsed:]—Libellant's notice of appeal.—Filed October 11, 1899. 1212

1213

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AUSTRO-AMERICANA STEAMSHIP CO.,
Libellant,

AGAINST

1214

1500 Tons of Brimstone, *ex* S. S. "ABBAZIA."

SIRS:

Please take notice that the libellant herein appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered in the
1215 above entitled cause on or about October 6th, 1899.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Libellant.

To SAMUEL H. LYMAN, Esq.,
Clerk.

Messrs. SULLIVAN & CROMWELL,
Proctors for Claimant.

Dated New York, October , 1899.

1216 [Endorsed:]—Libellant's notice of appeal.—Filed October 12, 1899.

1217

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

AUSTRO-AMERICANA STEAMSHIP CO.,
Libellant,

AGAINST

1218

100 tons of Brimstone, owned by JOHN MUNROE *et al.*, *ex* S.S. "ABBAZIA."

SIRS:

Please take notice that the libellant herein appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above entitled cause, on or about Oct. 24, 1899.

1219

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Libellant.

To SAMUEL H. LYMAN, Esq.,
Clerk.
Messrs. STERN & RUSHMORE,
Proctors for Claimant.
Dated New York, October 20, 1899.

[Endorsed:]—Libellant's notice of appeal, filed October 30, 1899.

1220

1221

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN, JOHN M. GOETCHIUS, JAMES L. MORGAN, Jr., HENRY L. GOETCHIUS and LANCASTER MORGAN

1222

AGAINST

The Steamship "STYRIA," her engines, etc.

Take notice that the libellants herein appeal from that portion of the final decree entered herein on the 17th day of July, 1899, which awards but $144.92 as
1223 damages, to the United States Circuit Court of Appeals for the Second Circuit.

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Libellants,
Office and Post Office Address,
45 William Street,
Borough of Manhattan,
New York City,
N. Y.

To SAMUEL H. LYMAN, Esq.,
1224 Clerk.
Messrs. CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Libellants' notice of appeal, filed July 28, 1899.

UNITED STATES DISTRICT COURT, 1225

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

The Steamship "STYRIA," her tackle, etc., 1226
Claimant.

SIRS:

Please take notice that the libellant herein appeals to the United States Circuit Court of Appeals for the Second Judicial District from so much of the final decree entered in the above entitled cause on the 4th day of October, 1899, as adjudges the damages at $176.82 1227 instead of the value of the brimstone on or about June 5, 1898, at the port of New York, after deducting the proceeds of the goods applicable under the stipulation of August 12, 1898, in mitigation of damages.

Dated New York, October 11, 1899.

Yours, &c.,
BOWERS & SANDS,
Proctors for Libellant,
31 Nassau Street,
Borough of Manhattan, 1228
New York City,
N. Y.

To SAMUEL H. LYMAN, Esq.,
Clerk.

Messrs. CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Libellant's notice of appeal, filed Oct. 12, 1899.

1229

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALFRED S. MALCOMSON

AGAINST

1230 The Steamship "STYRIA," her engines, etc.

GENTLEMEN:

Please take notice that the libellant herein hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from so much of the final decree entered in the above entitled cause on October 5th, 1899, as limits the damages recoverable by the libellant herein
1231 to the sum of $1,044.81.

Dated New York, October 12, 1899.

Yours, &c.,

SULLIVAN & CROMWELL,

Proctors for Libellant.

To SAMUEL H. LYMAN, Esq.,
Clerk.

Messrs. CONVERS & KIRLIN,
Proctors for Libellor.

1232 [Endorsed:]—Libellant's notice of appeal, filed Oct. 12, 1899.

UNITED STATES DISTRICT COURT, 1233

SOUTHERN DISTRICT OF NEW YORK.

JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERIC DE REISET,

AGAINST 1234

Steamship "STYRIA," her engines, etc.

SIRS:

Please take notice that the libellants herein hereby appeal to the United States Circuit Court of Appeals for the Second Circuit, from so much of the final decree entered in the above entitled cause on the 27th 1235 day of October, 1899, as limits the damages recoverable by the libellants herein to the sum of five hundred and sixty-three and 99/100 dollars ($563.99).

Dated New York, October 31st, 1899.

Yours, &c.,

STERN & RUSHMORE,

Proctors for Libellants,

40 Wall Street, N. Y.

To SAMUEL H. LYMAN,

Clerk. 1236

CONVERS & KIRLIN,

Proctors for Claimant.

[Endorsed:]—Libellants' notice of appeal, filed Nov. 1, 1899.

1237

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JAMES L. MORGAN *et al.*,
Libellants,

AGAINST

1238

The Steamship "STYRIA," SCOPINICH,
Claimant.

SIRS:

You will please take notice that the claimant herein appeals from the final decree entered herein on the 17th of July, 1899, to the United States Circuit Court
1239 of Appeals for the Second Circuit.

Dated New York, July 28th, 1899.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimant.

To SAMUEL H. LYMAN, Esq.,
Clerk.

Messrs. COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for Libellants.

1240 [Endorsed:]—Claimant's notice of appeal, filed July 29, 1899.

UNITED STATES DISTRICT COURT, 1241

SOUTHERN DISTRICT OF NEW YORK.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

The Steamship "STYRIA," ANTONIO G. SCOPINICH, 1242
Claimant.

SIRS:

Please take notice that the claimant herein appeals to the United States Circuit Court of Appeals for the Second Circuit, from the final decree entered in the above entitled cause on or about the 4th day of October, 1243
1899.

Dated New York, October 9th, 1899.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimant.

To SAMUEL H. LYMAN, Esq.,
Clerk.
Messrs. BOWERS & SANDS,
Proctors for Libellant.

[Endorsed:]—Claimant's notice of appeal, filed October 10, 1899. 1244

1245 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALFRED S. MALCOMSON,
Libellant,

AGAINST

1246 The Steamship "STYRIA," ANTONIO G. SCOPINICH,
Claimant.

SIRS:

Please take notice that the claimant herein appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the
1247 above entitled cause on the 5th day of October, 1899.

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimant.

To SAMUEL H. LYMAN, Esq.,
Clerk.
Messrs. SULLIVAN & CROMWELL,
Proctors for Libellant.
Dated New York, Oct. 11, 1899.

1248 [Endorsed:]—Claimant's notice of appeal, filed 1899.

UNITED STATES DISTRICT COURT, 1249

SOUTHERN DISTRICT OF NEW YORK.

JOHN MUNROE *et al.*,
Libellants,

AGAINST

The Steamship "STYRIA," ANTONIO G. SCOPINICH, 1250
Claimant.

SIRS:

Please take notice that the claimant herein appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above entitled cause on or about , 1899. 1251

Yours, &c.,
CONVERS & KIRLIN,
Proctors for Claimant.

To SAMUEL H. LYMAN, Esq.,
Clerk.
Messrs. STERN & RUSHMORE,
Proctors for Libellant.
Dated New York, October , 1899.

[Endorsed:]—Claimant's notice of appeal, filed Oct. 3d, 1899. 1252

1253 UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

AUSTRO-AMERICANA STEAMSHIP COMPANY,

Libellant,

1254

AGAINST

3,250 Cantars of Brimstone owned by JAMES L. MORGAN *et al.*, *ex* S.S. "ABBAZIA."

The libellant-appellant herein assigns error in the final decision of the United States District Court for
1255 the Southern District of New York herein as follows:

FIRST.—For that the Court refused to find that the *Styria* was justified in discharging the cargo as and when she did at Port Empedocle, and that accordingly under the stipulation between the parties entered into August 12th, 1898, the libellant had a lien upon and was entitled to recover from the claimant's consignment *ex Abbazia*, the damages, charges and expenses set forth in the libel.

1256 SECOND.—For that the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading.

THIRD.—For that the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she had so waited, she could have safely proceeded on her voyage with the sulphur.

FOURTH.—For that the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the trans-shipment clause in the bill of lading relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*. 1257

FIFTH.—For that the Court omitted and refused to find that the libellant was entitled to recover from the claimants' consignment of sulphur *ex Abbazia*, in consideration of their having carried the said sulphur on board the *Abbazia* and having paid certain charges, liens and expenses thereon at Port Empedocle, the rate of freight stipulated for in the original bills of lading, together with the expenses and charges on the said sulphur paid by the libellant, and which the claimants would have had to pay if they had forwarded the sulphur themselves. 1258

SIXTH.—For that the Court dismissed the libel herein.

CONVERS & KIRLIN,
Proctors for Libellant. 1259

[Endorsed:]—Libellant's assignment of errors, filed Oct. 12, 1899.

1260

1261

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

AUSTRO-AMERICANA STEAMSHIP COMPANY,

Libellant,

1262

AGAINST

4,550 Cantars of Brimstone, owned by SCHUYLER L. PARSONS, *ex* S.S. "ABBAZIA."

The libellant-appellant herein assigns error in the final decision of the United States District Court for
1263 the Southern District of New York herein as follows:

FIRST.—For that the Court refused to find that the *Styria* was justified in discharging the cargo as and when she did at Port Empedocle, and that accordingly under the stipulation between the parties entered into August 12th, 1898, the libellant had a lien upon and was entitled to recover from the claimant's consignment *ex Abbazia,* the damages, charges and expenses set forth in the libel.

1264 SECOND.—For that the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading.

THIRD.—For that the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and stoing the sulphur at Port Empedocle, and that if she had so waited, she could have safely proceeded on her voyage with the sulphur.

Fourth.—For that the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the transshipment clause in the bill of lading relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*. 1265

Fifth.—For that the Court omitted and refused to find that the libellant was entitled to recover from the claimant's consignment of sulphur *ex Abbazia*, in consideration of their having carried the said sulphur on board the *Abbazia* and having paid certain charges, liens and expenses thereon at Port Empedocle, the rate of freight stipulated for in the original bills of lading, together with the expenses and charges on the said sulphur paid by the libellant, and which the claimant would have had to pay if he had forwarded the sulphur himself. 1266

Sixth.—For that the Court dismissed the libel herein. 1267

Convers & Kirlin,
Proctors for Libellant.

[Endorsed:]—Libellant's assignment of errors, filed October 12, 1899.

1268

1269

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Second Circuit.

AUSTRO-AMERICANA STEAMSHIP COMPANY,

1270 Libellant,

AGAINST

1,500 Tons of Brimstone, ex. S. S. "ABBAZIA."

Assignment of Errors.

The libellant-appellant herein assigns error in the
1271 final decision of the United States District Court for the Southern District of New York herein as follows:

FIRST.—For that the Court refused to find that the *Styria* was justified in discharging the cargo as and when she did at Port Empedocle, and that accordingly under the stipulation between the parties entered into August 12th, 1898, the libellant had a lien upon and was entitled to recover from the claimant's consignment *ex Abbazia*, the damages, charges and expenses set forth in the libel.

1272

SECOND.—For that the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading.

THIRD.—For that the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she

had so waited, she could have safely proceeded on her voyage with the sulphur. 1273

Fourth.—For that the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the transshipment clause in the bill of lading relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

Fifth.—For that the Court omitted and refused to find that the libellant was entitled to recover from the claimant's consignment of sulphur *ex Abbazia*, in consideration of their having carried the said sulphur on board the *Abbazia* and having paid certain charges, liens and expenses thereon at Port Empedocle, the rate of freight stipulated for in the original bills of lading, together with the expenses and charges on the said sulphur paid by the libellant, and which the claimant would have had to pay if he had forwarded the sulphur himself. 1274 1275

Sixth.—For that the Court dismissed the libel herein.

Convers & Kirlin,
Proctors for Claimant.

[Endorsed:]—Libellant's assignment of errors, filed Oct. 12, 1899.

1276

1277

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Second Circuit.

Austro-Americana Steamship Company, Libellant, against 100 Tons of Brimstone owned by John Munroe *et al.*, *ex* S. S. "Abbazia."	Assignment of Errors.

1278

The libellant-appellant herein assigns error in the
1279 final decision of the United States District Court for the Southern District of New York herein as follows:

First.—For that the Court refused to find that the *Styria* was justified in discharging the cargo as and when she did at Port Empedocle, and that accordingly under the stipulation between the parties entered into August 12th, 1898, the libellant had a lien upon and was entitled to recover from the claimant's consignment *ex Abbazia*, the damages, charges and expenses set forth
1280 in the libel.

Second.—For that the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading.

Third.—For that the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and

storing the sulphur at Port Empedocle, and that if she had so waited, she could have safely proceeded on her voyage with the sulphur. 1281

Fourth.—For that the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the transshipment clause in the bill of lading relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

1282

Fifth.—For that the Court omitted and refused to find that the libellant was entitled to recover from the claimant's consignment of sulphur *ex Abbazia*, in consideration of their having carried the said sulphur on board the *Abbazia* and having paid certain charges, liens and expenses thereon at Port Empedocle, the rate of freight stipulated for in the original bills of lading, together with the expenses and charges on the said sulphur paid by the libellant, and which the claimants would have had to pay if they had forwarded the sulphur themselves. 1283

Sixth.—For that the Court dismissed the libel herein.

Convers & Kirlin,
Proctors for Libellant.

[Endorsed:]—Libellant's assignment of errors, filed Oct. 30, 1899.

1284

1285

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Second Circuit.

James L. Morgan *et al.*,
Libellants-Appellants,

1286

vs.

The Steamship "Styria," Antonio G. Scopinich,
Claimant-Appellant.

Assignment of Error.

The libellants above named hereby assign error in the
1287 decision of the District Court herein, as follows:

1. Said Court erred in allowing as damages the sum of $114.92 only.

2. Said Court erred in not allowing as damages at least the sum of $2,986.54.

3. Said Court erred in affirming the report of the Commissioner, which adopted an erroneous method of assessing the damages herein.

1288

4. Said Court erred in holding that the clause in the bill of lading limiting liability to the invoiced or declared value of the goods was applicable to the case.

Dated New York, August 15th, 1899.

Cowen, Wing, Putnam & Burlingham,
Proctors for Libellants-Appellants.

[Endorsed:]—Libellant's assignment of errors, filed Aug. 16, 1899.

UNITED STATES CIRCUIT COURT OF APPEALS, 1289

FOR THE SECOND CIRCUIT.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

The Steamship "STYRIA," her engines, etc.,
Claimant.

Assignment of Errors. 1290

The libellant-appellant herein assigns error in the final decision of the United States District Court for the Southern District of New York herein, as follows:

FIRST.—That the Court decreed that the libellant was entitled to recover only the invoice value of the brimstone. 1291

SECOND.—That the libellant was not allowed to recover, as his damages, the value of the goods at the port of New York on or about the 5th day of June, 1898, when the steamship *Styria* arrived without the goods.

THIRD.—That the libellant was not awarded his full costs and disbursements in this cause because of an offer of judgment made by the claimant. 1292

BOWERS & SANDS,
Proctors for Libellant.

[Endorsed:]—Libellant's assignment of errors, filed Oct. 13, 1899.

1293

UNITED STATES CIRCUIT COURT OF APPEALS,

Second Circuit.

Alfred S. Malcomson

against

1294 The Steamship "Styria," her engines, etc.

Assignment of Errors.

Libellant-appellant herein assigns error in the final decree of the United States District Court for the Southern District of New York herein, as follows:

First.—That the Court limited the damages recoverable by the libellant herein to the sum of $1,044.81.

1295

Second.—That the Court held that any stipulation in the bill of lading was effectual to limit the damages recoverable by libellant.

Third.—That the Court did not hold that the ordinary rule of damages for breach of contract of carriage by the carrier, was applicable in this case without regard to the bill of lading.

Fourth.—That the Court held that the provision in
1296 the bill of lading limiting recovery by the shipper in case of loss or damage to goods, to the invoice value of the goods shipped, had any other effect than to fix the maximum of damages recoverable.

Fifth.—That the Court held that since, under the provision of the bill of lading in question, the damages recoverable by the shipper in case of total loss could never exceed the invoice value of the goods, therefore damages resulting from any other cause than total loss, whatever the amount, in fact, must be limited to the difference between the invoice value of the goods and the

actual amount for which they were sold, less only freight and weighing charges. 12 7

SIXTH.—That the Court held that the stipulation between the parties, dated August 12th, 1898, affected the right of the libellant to damages, or the amount of damages recoverable by him herein.

SEVENTH.—That the Court overruled libellant's exceptions to the report of the Commissioner herein.

EIGHTH.—That the Court confirmed the report of the Master herein. 1982

SULLIVAN & CROMWELL,
Proctors for Libellant.

[Endorsed:]—Libellant's assignment of error, filed Oct. 13, 1899.

UNITED STATES CIRCUIT COURT OF APPEALS, 12 9

SECOND CIRCUIT.

JOHN MUNROE, EDGAR LOCKWOOD, HENRY W. MUNROE and FREDERICK DE REISET

AGAINST

Steamship "STYRIA," her engines, etc.

Assignment of Errors. 1300

The libellants, the appellants herein, assign errors in the final decree of the United States District Court for the Southern District of New York herein as follows:

FIRST.—That the Court limited the damages recoverable by the libellants herein to the sum of Five hundred and sixty-three and 99/100 dollars ($563.99).

1301 SECOND.—That the Court held that any stipulation in the bill of lading was effectual to limit the damages recoverable by the libellants.

THIRD.—That the Court did not hold that the ordinary rule for damages for breach of contract of carriage by the carrier was applicable in this case without regard to the bill of lading.

FOURTH.—That the Court held that the provision in
1302 the bill of lading, limiting the recovery by the shipper in case of loss or damage to goods, to the invoice value of the goods shipped, had any other effect than to fix the memorandum of damages recoverable.

FIFTH.—That the Court held that since under the provision of the bill of lading in question the damages recoverable by the shipper, in case of total loss, could never exceed the invoice value of the goods, therefore damages resulting from any other cause than total loss, whatever the amount, in fact must be limited to the
1303 difference between the invoice value of the goods and the actual amount for which they were sold, less only freight and weighing charges.

SIXTH.—That the Court held that the stipulation between the parties, dated October 12th, 1898, affected the rights of the libellants to damages, or the amount of damages recoverable by them herein.

SEVENTH.—That the Court overruled libellants' ex-
1304 ceptions to the report of the Commissioner herein.

EIGHTH.—That the Court confirmed the report of the master herein.

STERN & RUSHMORE,
Proctors for Libellants,
40 Wall Street, N. Y.

[Endorsed:]—Libellants' assignment of errors.—Filed November 1, 1899.

UNITED STATES CIRCUIT COURT OF APPEALS, 1305

FOR THE SECOND CIRCUIT.

JAMES L. MORGAN *et al.*,
Libellants,

AGAINST

The Steamship "STYRIA," ANTONIA G. SCOPINICH,
Claimant.

Assignment of Errors 1306

The claimant-appellant herein assigns error in the final decision of the United States District Court for the Southern District of New York herein as follows:

FIRST.—That the Court decreed that the libellants should recover damages by reason of the matters alleged in the libel. 1307

SECOND.—That the Court did not dismiss the libel.

THIRD.—That the Court found that the ship was not justified in discharging and storing the sulphur at Port Empedocle, as and when she did.

FOURTH.—That the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading. 1308

FIFTH.—That the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she had so waited, she could have safely proceeded on her voyage with the sulphur.

1309 SIXTH.—That the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the transshipment clause in the bill of lading relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

SEVENTH.—That the Court held that notwithstanding the provision in the bill of lading limiting the ship's liability to the invoice value of the sulphur, and the
1310 stipulation which provided that the proceeds of the sale of the sulphur, less charges at New York incident to its sale (excluding freight), should be credited against the libellants' claim herein, and notwithstanding that the said proceeds equaled or exceeded the said invoice value, the Court entered a decree adjudging that the libellants recover damages against the *Styria* herein.

EIGHTH.—That the Court found that freight should be deducted as a charge incurred in the sense of the stipulation entered into by the parties August 12th,
1311 1898, in determining the net proceeds of sale to be credited against libellants' claim.

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's Assignment of Errors.—Filed Oct. 12, 1899.

1312

UNITED STATES CIRCUIT COURT OF APPEALS, 1313

FOR THE SECOND CIRCUIT.

SCHUYLER L. PARSONS,
Libellant,

AGAINST

The Steamship "STYRIA," ANTONIO G. SCOPINICH,
Claimant.

Assignment of Errors. 1314

The claimant-appellant herein assigns error in the final decision of the United States District Court for the Southern District of New York herein as follows:

FIRST.—That the Court decreed that the libellant should recover damages by reason of the matters alleged in the libel. 1315

SECOND.—That the Court did not dismiss the libel.

THIRD.—That the Court found that the ship was not justified in discharging and storing the sulphur at Port Empedocle, as and when she did.

FOURTH.—That the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading. 1316

FIFTH.—That the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she had so waited she could have safely proceeded on her voyage with the sulphur.

1317 SIXTH.—That the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the trans-shipment clause in the bill of lading, relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

SEVENTH.—That the Court held that notwithstanding the provision in the bill of lading limiting the ship's liability to the invoice value of the sulphur, and then
1318 stipulation which provided that the proceeds of the sale of the sulphur, less charges at New York incident to its sale (excluding freight), should be credited against the libellant's claim herein, and notwithstanding that the said proceeds equaled or exceeded the said invoice value, the Court entered a decree adjudging that the libellant recover damages against the *Styria* herein.

EIGHTH.—That the Court found that freight should be deducted as a charge incurred in the sense of the stipulation entered into by the parties August 12th,
1319 1898, in determining the net proceeds of sale to be credited against libellant's claim.

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's assignment of errors, filed Oct. 12, 1899.

1320

UNITED STATES CIRCUIT COURT OF APPEALS, 1321

FOR THE SECOND CIRCUIT.

ALFRED S. MALCOMSON,
Libellant,

AGAINST

The Steamship "STYRIA," ANTONIO G. SCOPINICH,
Claimant.

Assignment of Errors. 1322

The claimant-appellant herein assigns error in the final decision of the United States District Court for the Southern District of New York herein as follows:

FIRST.—That the Court decreed that the libellant should recover damages by reason of the matters alleged in the libel. 1323

SECOND.—That the Court did not dismiss the libel.

THIRD.—That the Court found that the ship was not justified in discharging and storing the sulphur at Port Empedocle, as and when she did.

FOURTH.—That the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading. 1324

FIFTH.—That the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she had so waited, she could have safely proceeded on her voyage with the sulphur.

1325 SIXTH.—That the Court held that the forwarding of the sulphur by the shipowners, on the steamshep *Abbazia* did not, under the transshipment clause in the bill of lading, relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

SEVENTH.—That the Court held that notwithstanding the provision in the bill of lading limiting the ship's liability to the invoice value of the sulphur, and the
1326 stipulation which provided that the proceeds of the sale of the sulphur, less charges at New York incident to its sale (excluding freight), should be credited against the libellant's claim herein, and notwithstanding that the said proceeds equaled or exceeded the said invoice value, the Court entered a decree adjudging that the libellant recover damages against the *Styria* herein.

EIGHTH.—That the Court found that freight should be deducted as a charge incurred in the sense of the stipulation entered into by the parties August 12th,
1327 1898, in determining the net proceeds of sale to be credited against libellant's claim.

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's assignment of errors, filed Oct. 12, 1899.

1328

1329

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Second Circuit.

JOHN MUNROE *et al.*,
Libellants,

AGAINST

The Steamship "STYRIA," ANTONIO G. SCOPINICH,
Claimant.

Assignment of Errors. 1330

The claimant-appellant herein assigns error in the final decision of the United States District Court for the Southern District of New York herein as follows:

FIRST.—That the Court decreed that the libellants should recover damages by reason of the matters alleged in the libel. 1331

SECOND.—That the Court did not dismiss the libel.

THIRD.—That the Court found that the ship was not justified in discharging and storing the sulphur at Port Empedocle, as and when she did.

FOURTH.—That the Court did not hold that the ship was exonerated from bringing the sulphur forward on her then voyage by the existence of a state of war and the liability to capture, irrespective of the clauses in the bill of lading. 1332

FIFTH.—That the Court held that the ship was bound to wait until May 10th before exercising the privilege contained in the bill of lading of landing and storing the sulphur at Port Empedocle, and that if she had so waited she could have safely proceeded on her voyage with the sulphur.

1333 SIXTH.—That the Court held that the forwarding of the sulphur by the shipowners, on the steamship *Abbazia* did not, under the transshipment clause in the bill of lading, relieve them from liability for damages caused by the failure to carry the sulphur forward on the *Styria*.

SEVENTH.—That the Court held that notwithstanding the provision in the bill of lading limiting the ship's liability to the invoice value of the sulphur, and the
1334 stipulation which provided that the proceeds of the sale of the sulphur, less charges at New York incident to its sale (excluding freight), should be credited against the libellants' claim herein, and notwithstanding that the said proceeds equaled or exceeded the said invoice value, the Court entered a decree adjudging that the libellants recover damages against the *Styria* herein.

EIGHTH.—That the Court found that freight should be deducted as a charge incurred in the sense of the stipulation entered into by the parties August 12th,
1335 1898, in determining the net proceeds of sale to be credited against libellants' claim.

CONVERS & KIRLIN,
Proctors for Claimant.

[Endorsed:]—Claimant's assignment of errors, filed Oct. 30, 1899.

1336

1337

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

JAMES L. MORGAN,
Libellant-Appellant,

vs.

The Steamship "STYRIA," her engines, etc.,
Respondent-Appellee,

And Seven Other Cases.

Assignment of Errors.

1338

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify, that the foregoing is a correct transcript of the record of the District Court in the above entitled cause made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit. 1339

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 25th day of January, in the year of our Lord one thousand nine hundred, and of the independence of the said United States the one hundred and twenty-fourth. 1340

[SEAL.]

SAM. H. LYMAN,
Clerk.

[Endorsed :]—District Court of the United States for the Southern District of New York—James L. Morgan *et al.*, Libellant-Appellant, agst. the S. S. *Styria*, her engines, etc., Respondent-Appellee, and seven other cases—Apostles.—Stamped on page: United States District Court of Appeals, Second Circuit—Filed Jan. 25, 1900—William Parkin, Clerk.

United States Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

Nos. 137–144—October Term, 1899.

Submitted March 14, 1900. Decided April 3, 1900.

JAMES L. MORGAN *et al.*,
Libelants-Appellants,

vs.

THE STEAMSHIP "STYRIA," her engines, &c., ANTONIO SCOPINICH,
Claimant-Appellant.

SCHUYLER L. PARSONS,
Libelant-Appellant,

vs.

THE SAME,
Claimant-Appellant.

ALFRED S. MALCOMSON,
Libelant-Appellant,

vs.

THE SAME,
Claimant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

Before Judges WALLACE, LACOMBE and SHIPMAN.

JOHN MUNROE *et al.*,
Libelants-Appellants,

vs.

THE SAME,
Claimant-Appellant.

AUSTRO-AMERICANA STEAMSHIP COMPANY, owner of the Steamships "Styria" and "Abbazia,"
Libelant-Appellant,

vs.

3,250 CANTORS OF BRIMSTONE, owned by JAMES L. MUNROE & COMPANY,
Respondent-Appellee.

THE SAME,
Libelant-Appellant,

vs.

4,550 CANTORS OF BRIMSTONE, owned by SCHUYLER L. PARSONS,
Respondent-Appellee.

THE SAME,
Libelant-Appellant,

vs.

1,500 TONS OF BRIMSTONE, owned by ALFRED S. MALCOMSON,
Respondent-Appellee.

THE SAME,
Libelant-Appellant,

vs.

100 TONS BRIMSTONE, owned by JOHN MUNROE *et al.*,
Respondents-Appellees.

[337

These causes come here upon appeals from decrees of the District Court, Southern District of New York. There are four libels and cross-libels, arising out of the same transaction. The libelants are all owners of different lots of brimstone, shipped by the steamship *Styria* at Porto Empedocle, Sicily, in the month of April, 1898, and, the vessel not having brought over the brimstone, libeled her upon her arrival for damages resulting from her failure to bring it in accordance with the contract. Subsequently, by stipulation between the parties, the brimstone was brought over by the *Abbazia*, another steamer belonging to the Austro-Americana Steamship Company, which is the owner of the *Styria*, and upon its arrival here, was libeled by that company for expenses incurred in landing and storing in Sicily the brimstone in question. Decrees were entered in the District Court in favor of the libelants and cross-claimants, from which decrees the claimant and cross-libelants appealed. The libelants being dissatisfied with the amount of damages awarded by the District Court, appeal from so much of the decrees in their favor as limits their recovery to the amount actually awarded.

The facts sufficiently appear in the opinion.

LACOMBE, *Circuit Judge:*—The *Styria* is an Austrian steamer owned by the Austro-Americana

Steamship Company. She was bound on a voyage from Trieste via Sicilian ports to New York. She sailed from Trieste with some general cargo for New York on April 16, 1898, reached Cape Empedocle (Girgenti) her second port early on April 21, and began taking on brimstone on the afternoon of the same day. Five shippers at that place furnished for shipment about 2,200 tons, the cargo here involved, which was laden on the vessel by April 24, on which day the vessel was cleared at the Custom House and was ready to proceed on her voyage. The captain was under instructions to proceed to Messina and Palermo to fill up with fruits; fruit-cargo at these ports had been engaged.

About this time war broke out between this country and Spain. There is no dispute as to the sequence of historical events, which is as follows:

338] On April 20 Congress passed and the President approved the joint resolution recognizing the freedom and independence of the people of Cuba, and demanding that the Government of Spain relinquish its authority in the island and withdraw its land and naval forces. On the same day the Spanish Minister at Washington demanded and received his passports. On the morning of April 21 our Minister at Madrid was informed by the Spanish Minister of Foreign Affairs that the diplomatic relations between the two governments were broken off. On the same day he left Madrid. On April 23 the Queen Regent of Spain issued a decree announcing the existence of war with the United States, which was published in the official papers at Madrid on April 24 and communicated to the other powers and made public on or about April 25. On that day it was published in the newspapers of this country, and presumably in Sicily and England. The declaration of war was made by the United States under an act passed April 25, declaring the existence of war since April 21. There is no evidence in the case which

will warrant a finding that the captain knew that war had been declared before he shipped libelant's sulphur and signed bills of lading therefor. On April 25 the Queen Regent of Spain issued a proclamation, which contained the following provision:

"ART. V.—In order to capture the enemy's ships, to confiscate the enemies merchandise under their own flag, and contraband of war under any flag, the Royal Navy, auxiliary cruisers and privateers, if and when the latter are authorized, will exercise the right of visit on the high seas and in the territorial waters of the enemy, in accordance with international law and any regulations which may be published for the purpose.

"ART. VI.—Under the denomination contraband of war the following articles are included:

Cannons, machine-guns, * * * powder, sulphur, saltpeter, etc., etc."

Thereafter, and while the state of war continued unmodified, under the rules of international law sulphur or brimstone shipped and owned as this was, was subject to seizure by war vessels of Spain on the high seas, a process which would involve the arrest of the neutral vessel carrying it wherever she might be, off the coast of Sicily, in the Straits of Gibraltar, or on the banks of Newfoundland, her enforced deviation from her voyage to a Spanish port and her detention there until a Spanish prize court should have determined the questions arising upon confiscation of the cargo. [339

It appears from the record that on April 27 the captain knew that Spain and the United States were at war. On that day he began to discharge and warehouse the sulphur, notifying the shippers that he did so "on finding risky my passage to New York, with the actual sulphur cargo, for facts of war." The unloading of the sulphur was completed on May 7, and shippers again notified. On the same day she cleared, and on the next morning,

May 8, proceeded on her voyage with the cargo laden at Trieste, picked up her fruit at Messina and Palermo, and sailed from Italian waters May 9th, reaching New York on June 3d.

It seems manifest that, upon the outbreak of war, a voyage with contraband on board to the port of one of the belligerents might fairly be regarded as a risky piece of business. The suggestion made upon the argument that the naval power of Spain was not such as would induce a "man of ordinary courage, judgment and experience" to hesitate to proceed is of no weight. We may not attribute to the captain of the *Styria* knowledge gained after the event; and indeed this Court is not advised of any historical facts which would warrant the conclusion that it was not entirely within the power of Spain during the first few months of the war to arrest and search every vessel westward bound through the Straits of Gibraltar, and picking her way along by the lighthouses on the Spanish coast.

340] The first question to be determined is whether with such a risk involved in the event of the vessel's proceeding with the sulphur on board, the captain was justified in relanding and warehousing it. Three clauses of the bill of lading are relied upon.

(*a.*) "Restraints of Princes and Rulers of People * * * excepted."

(*b.*) "In case of blockade or interdict of the port of discharge, or if, without such blockade or interdict, the master shall consider it unsafe for any reason, to enter or discharge cargo there, he is to have option of landing the goods at any other port which he may consider safe at shipper's risk and expense, and on the goods being placed in charge of any mercantile agent or of British Consul, and a letter being put into the Post Office addressed to the shipper and consignee, if named, stating the landing and with whom deposited, the goods to be at the

shipper's risk and expense and the master and owners discharged from all responsibility."

(*c.*) "With liberty (in event of steamer putting back to this or into any other port, or otherwise being prevented from any cause from commencing or proceeding in the ordinary course of her voyage) to ship or trans-ship the goods by any other steamer."

The second clause above quoted was made most prominent upon the argument; question being raised whether it was applicable to a condition of affairs existing elsewhere than at the port of discharge, and also whether as matter of fact the master exercised the option provided for; whether he did himself consider the voyage unsafe;—there being evidence tending to show that he landed the sulphur because of telegraphic orders from the steamer's managers in Glasgow. We do not find it necessary to discuss this branch of the case, because we find in clause (*a*) abundant authority for a refusal to carry forward the sulphur while such a condition of affairs existed as that already described as being generally known to exist when the discharge began on April 27. There is no logical difference between a restraint of [341 Princes and Rulers exercised by a cruiser with power to visit, search and seize lying two leagues off Cape Empedocle, and that exercised by a half-dozen cruisers patrolling a narrow strait through which, if the voyage be made, the vessel must pass. Under such circumstances the owner of contraband cargo (loaded as this was before war broke out) could with reason insist that it would be gross negligence on the part of the ship to bring his cargo forward. Moreover it would certainly be unreasonable to require the ship to remain in port with the contraband cargo on board until the war should cease, a period of months, possibly years. The owners of other cargo not contraband have rights as much, if not more entitled to consideration than those of the owners who have been unfortunate enough to ship the cargo which has produced the risk.

That a blockade is within the term "restraints of rulers and princes" has been settled for the federal courts by the decision in Olivera *v.* Ins. Co., 3 Wheat., 183. That a well-founded apprehension of capture by the cruisers of a belligerent is the equivalent of an actual restraint is the doctrine of the later authorities. The case of Dickinson *v.* Ritchie, 10 East., 530, mainly relied on by libelants, is not in point; the only excuse there offered was that the captain apprehended an embargo would be laid, but in the case at bar he knew that war had been declared. In Geipel *v.* Smith, L. R., 7 Q. B., 410 Cockburn, *C. J.*, says: "Is a blockade a restraint of princes? I think it is * * * provided the blockade is effective: and in the eye of the law a blockade is effected if the enemies' ships are in such numbers and position as to render the running of the blockade a matter of danger, although some vessels may succeed in getting through. * * * It would be monstrous to say that in such a case the parties must wait—for the obligation must be mutual—till the restraint be taken off—the shipper with cargo which might be perishable, or its market value destroyed—the ship-owner with his ship lying idle, possibly rotting." In Rodoconachi *v.* Elliott, L. R., 9 C. P., 518, the Exchequer
342] Chamber held to the same effect where goods in transit from China to England had reached Paris just at the beginning of its siege by the Germans, and it appeared that an effort to remove them would probably have resulted in their seizure. In Nobels Explosives Co. *v.* Jenkins & Co., L. R., 1896, 2 Q. B., goods, contraband in the event of war, were shipped from England to Yokohama. While on the high seas war broke out between China and Japan, of which the master heard when he put into Hong Kong, whereupon he discharged the goods and placed them in safe custody and continued his voyage to Yokahama. The Court sustained the ship saying: "The goods were as effectually stopped at Hong Kong as if there had been an express order

from the Chinese government that contraband of war should be landed."

Inasmuch as the master, where the contract was made in times of peace, could properly decline to carry forward a cargo which by the subsequent breaking out of war had become contraband, we fail to see why he should not have the right to land such contraband cargo, with all proper precautions as to safe-keeping, thus leaving his ship free to discharge its obligations to innocent cargo without risk of delay by reason of an actual arrest which would be caused only by the presence of such contraband cargo. The ship made no contract to carry contraband of war to the port of a belligerent, and should not be held to the obligations of a contract into which she has never entered. We understand that the District Court reached this same conclusion, but found the ship in fault because she did not wait a reasonable period to see if there might not be some reasonable assurance of safety; and held that "the commencement of the discharge on the 27th was too hasty and precipitate." This brings us to the next branch of the case.

When two nations formally proclaim the existence of a state of war between themselves with all the solemnity observed in this instance, it would seem to be going too far to say that parties whose contracts are affected thereby should wait some indefinite time, which a court shall find reasonable, [343 in a vague expectation that the belligerents may think better of it and make peace. A situation is quite conceivable, where delay might fairly be required. Thus the minister of one power or the other might demand his passports, or the day named in an ultimatum might pass without compliance with its requirements: or a squadron of the war vessels of one power might impress seamen from the deck of the war vessel of another power, as the *Carnatic* and her consorts did with the *Baltimore* in 1798, or the war vessel of one power encountering the war

vessel of another upon the high seas might pour broadside after broadside into her, as the *Leopard* did with the *Chesapeake* in 1807 - any one of which acts would seem to import the imminence if not the actual existence of war, and yet might fall short of being such authoritive evidence of a state of belligerency as would justify a master in treating any part of his cargo as being thereby made contraband. But the situation shown here was a very different one; both nations had united in proclaiming to the whole world that they were at war, and we know of no reason why the master of any vessel of a neutral nation was bound to wait twenty-four hours, or twenty-four days or twenty-four weeks, to see if the two belligerents would not settle their differences.

As soon as he learned that war was declared the master knew that the cargo he had taken on board at Port Empedocle was contraband. "I knew," says he, "that sulphur is to make gunpowder; everybody knows that. * * * I thought it must be contraband." We should have some doubts as to the efficiency of a master for international commerce who did not know that sulphur was contraband of war. It certainly should be a safe assumption for the master of a neutral vessel to make that he cannot carry such cargo to the ports of one belligerent without risking its seizure by the other. And, in the absence of special circumstances, there would seem to be no necessity to wait for further assurance in that regard. In the case at bar, however, there were special circumstances which will be next considered.

344] The exportation of sulphur is one of the greatest industries of the island of Sicily, and the Italian government was naturally solicitous that the trade in sulphur with the United States should not be interfered with. It now appears in the record by reports obtained from diplomatic sources that shortly after the proclamation of the Queen Regent negotiations were opened by the

Italian government to secure a modification of its provisions so that sulphur should not be considered contraband of war. The Spanish Government declined to alter the decree, but on April 29th at Madrid the Spanish Minister for Foreign Affairs "verbally" [*sic:* orally?] stated to the Italian Ambassador that orders would be given to the Naval Departments, as a temporary measure, not to treat sulphur as contraband of war. The same statement was made by the Spanish Minister for Foreign Affairs to the British Ambassador on May 6th. On May 31st the same Minister stated in an official note to both the Italian and the British Ambassadors that the treatment by Spain of sulphur as contraband of war would be temporarily suspended, and that the order which had been given to that effect would not be revoked without due notice.

Not being in telephonic communication with the chancellery of the Embassy at Madrid, the master of the *Styria* was not advised of these transactions at the moment they occurred. And his conduct is to be judged not in the light of exact knowledge acquired after the event, but by such information as may have been available for him at the time and place. As we have seen he knew certainly on April 27th and probably on April 26th that war had been declared, and that his sulphur cargo was contraband; that he was, therefore, entitled to land and store it, thus leaving his ship free to carry out her obligations to the rest of the cargo. On May 25th the *Giornale di Sicilia*, a newspaper published at Palermo and which the captain saw from day to day stated that Messina merchants had asked their Parliamentary Deputy to urge the Government to cooperate to exclude brimstone from being considered contraband. From day to day thereafter the paper was filled with reports and rumors as to [345 the progress of this movement to secure exemption. But down to the 6th of May not one of these reports bore the stamp of authority; no one vouched for their accuracy. The statements in the clippings

from the newspaper which have been printed in the record are merely the expression of the beliefs and expectations of its correspondents in Rome, or elsewhere furnishing copy to a paper published in a community where an intense interest was felt in having sulphur exempted. There was no reason why it should be exempted; it is a variety of merchandise such as always has been contraband, its exportation to the United States might well be considered an "aid" to Spain's enemy; no one appears to have suggested that the United States concede the same exemption. On the one hand it might be urged that it would please the government and people of Italy to grant the request, but on the other hand, in the case of merchandise so highly contraband neither the Italian Government nor people could justly take offense, if Spain should insist on exercising the rights which international law accords to every belligerent. Enlightened by the information now made known, we can see that the hopeful prognostications of the writers for the Journal of Sicily were well founded, but there was nothing to give any such assurance at the time they appeared We should hesitate to hold that it was the duty of a master under similar circumstances to delay action on the expectation that a belligerent would voluntarily abandon one of its weapons, on no better assurance that such action would be taken than the statements of anonymous and irresponsible contributors to a newspaper published in a community which is extremely solicitous that such action be taken.

By May 6th, however, the situation changed. The Journal of Sicily published an official declaration from the Italian Minister of Agriculture, Industry and Commerce, as follows:

"Chamber of Commerce, Palermo: I inform the Chamber of Commerce for the useful informa-
346] tion of merchants, that by the decree of April 23rd of the Spanish Government, are considered as contraband of war, arms, projectiles, fuses, powder, sulphur, nitre. * * * I would also state

that in consequence of our request, the Spanish Government has given notice to the commanders of its vessels to let sulphur pass free. (Signed) The Minister Coeco-Ortu." Here was an official declaration which the master should have accepted as sufficient. The Italian Government through a cabinet minister announces that official action has been taken by the Spanish Government, the practical result of which was to make sulphur free from capture. It matters not that the Spanish Government might thereafter reconsider this decision and direct its cruisers to seize sulphur, because it was to be assumed that cargos taken out in reliance upon the proclamation of the Italian Government would be respected. If they were not, the Italian Government would have good ground for claiming indemnity from Spain, and a *casus belli* in case of its refusal.

It is not quite clear on what day this proclamation was published in the Journal of Sicily. Each issue of that newspaper has a double date, and the issue containing it is dated "Thursday–Friday, 5th-6th May, 1898." The sulphur was not wholly discharged until May 7th. Even if it had been, however, this proclamation appearing before the steamer sailed upon her voyage we are clearly of the opinion that it was the master's duty to re-ship it, since the condition of affairs which made it contraband had ceased to exist. The loss sustained by reason of the expense of discharging and reloading so much of the sulphur as had been discharged before the changed condition was officially made known should be borne by the cargo owner; it was his misfortune that after he had put it aboard a war broke out which made his cargo contraband, and relieved the ship from the obligation to carry it while it remained in that condition. The ship, however, is liable for any loss sustained in consequence of her failure to carry and deliver when she could do so safely. There was no loss or deterioration of the sulphur, but there was a loss of market. The value of sul- [347
phur on the day it would have reached this market had it been reshipped and brought forward

when the Italian proclamation was published was greatly in excess of its value when it finally reached here.

The measure of damages in such cases is well settled; the loss is the difference between the price the goods actually brought and the price they would have brought had they been sold on the day when they should have arrived. The only remaining question in the case is whether this method of calculation is modified by the express terms of the contract.

The bill of lading contains the following clause: "The ship owner is not to be liable for any damage to any goods which are capable of being covered by insurance, nor for any claim, notice of which is not given before the removal of the goods, nor for claim for damage or detention of goods under through bill of lading, where the damage is done or detention occurs whilst the goods are not in possession of the ship owner, nor in any case for more than the invoice or declared value of the goods whichever shall be the least." The District Judge construed this as providing that in any settlement of loss or damage the invoice value and not the actual value of the goods should be taken as a basis, and therefore found the damage from loss of market to be the difference between such invoice value and the price the sulphur actually brought.

A similar clause has been so interpreted in the same district in the *Hadji*, 18 F. R., 459, and Pearse *v.* Quebec Steamship Company, 24 F. R., 285, and in the District of New Jersey in the *Lydian Monarch*, 23 F. R., 298. The *Hadji* was appealed, 20 F. R., 875, but the point was not passed upon in the Circuit Court. In the brief of counsel for claimant there is cited *The Aline*, 23 Blatchf., 335, but it does not sustain the proposition. We are unable to concur in the interpretation put upon this clause, for the reason that the language used does not seem to import any such idea. The statement that

the shipowner shall not be liable in any case
348] for more than the invoice value of the goods

is a simple and straightforward one; grammatically construed it fixes a final limit of liability beyond which he shall not be required to respond; it does not profess to regulate the calculation by which a loss is to be ascertained, if such loss is less than the limit. To give them such a meaning would seem to be to substitute for the contract the parties have made another and different one, which they might easily have made for themselves, had they wished to do so. Of a precisely similar clause the Supreme Court of Massachusetts said: "The words, 'the liability shall not exceed,' &c., are apt words to express the outside limit of the sum to be recovered; but both the particular words and the whole structure of the sentence are most inapt to express a stipulation that, if the goods are still equal to the invoice value there shall be no recovery at all." Brown *v.* Cunard S. S. Co., 147 Mass., 60.

The decree of the District Court is, therefore, reversed, and the cause remanded, with instructions to decree in favor of libelants for the difference between the proceeds of the sale (less charges of sale), and what would have been the proceeds (less charges of sale) of a similar sale on the day on which the sulphur could have been sold, had it been promptly reshipped and brought to this market—less the freight. Against which sum there is to be credited the proper expenses of discharging and reshipping at Cape Empedocle, as above indicated, and claimed in the cross libels. Interest will go with the balance, and, since both libelants and cross-libelants have prevailed, there should be no costs. In this Court, each side having prevailed in part, there will be no costs.

J. Parker Kirlin, for the "*Styria*."
E. B. Hill, for Malcomson and Munroe.
Latham G. Reed, for Parsons.
Charles C. Burlingham, for Morgan.

349] UNITED STATES CIRCUIT COURT OF APPEALS,

SECOND CIRCUIT.

OCTOBER TERM, 1899.

MORGAN and others (four libels) AGAINST The Steamship STYRIA. (And four cross-libels).	Nos. 137–144.

And now comes the Austro-Americana Steamship Company, owner of the steamship *Styria*, and respectfully prays that these cases be restored to the docket, and that a rehearing be ordered therein.

April 12, 1900.

J. PARKER KIRLIN,
Of Counsel for Appellant.

United States Circuit Court of Appeals, Second Circuit. Filed April 12, 1900. William Parkin, Clerk.

UNITED STATES CIRCUIT COURT [350
OF APPEALS,

SECOND CIRCUIT.

OCTOBER TERM, 1899.

MORGAN and others (four libels) AGAINST The Steamship STYRIA (and four cross-libels).	Nos. 137–144.

PETITION FOR REHEARING.

TO THE HONORABLE THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

The Austro Americana Steamship Company, owner of the steamship *Styria*, appellant in these causes, respectfully presents its petition for a rehearing of the decision as to the principle on which the damages in these cases should be adjusted.

The ground of the application, in brief, is that the cargo was brought forward by the shipowners after the libels herein were filed, and their liability had become fixed, under a stipulation which, in the circumstances, amounted to a contract between the parties that the proceeds of the sale of the cargo, less the costs of sale, should be credited against the claims for damages set forth in the libels, as limited by the terms of the bills of lading (fols. 788–789).

Sufficient emphasis, perhaps, was not laid on that point in the original brief of this appellant, though it was alluded to (*Brief*, p. 39).

Some confusion may have crept into the argument from a remark of the District Judge, in his opinion

351] overruling the exceptions to the Commissioner's report, from which this Court may have inferred that the case was considered to be one of "a partial loss" (fol. 1177).

In fact, it is submitted, the case is not one of partial loss, and the point which this Court has decided, with reference to the clause in the bills of lading, limiting damages to the amount of the invoice value, was really not involved in the present cases.

The petitioner's objection, here, is not to the rule established by the Court in its opinion, but it relates to the application of such a rule, to the facts and contracts, involved in these causes.

(1) The ship arrived in New York June 3, 1898. The libels were filed on June 4, 1898 (fol. 24); June 6, 1898 (fol. 100); June 4, 1898 (fol. 134), and June 7, 1898 (fol. 214). Each of those libels alleged non-delivery of the sulphur; some of them alleged a conversion; and all claimed damages for the full value of the shipments. Full security was furnished by the ship.

The Court has held, in its opinion, that the ship committed a breach of contract in failing to reload the sulphur on and after May 6th and bring it along on that voyage. Accordingly, if the cargo had not been forwarded under the subsequent stipulation or contract of August 12th (pp. 197–198), the libelants would have had decrees for full damages as limited by the bills of lading. It seems plain that, in that event, the damages would have been limited to the invoice value of the goods under the clause to that effect in the contracts of carriage (fol. 753). (*Hart* v. *Pennsylvania Railroad Co.* 112 U. S., 331, 341, 342; *Calderon* v. *Atlas Steamship Co.*, 170 U. S., 272, 278; *Graves* v. *Lake Shore Ry.*, 137 Mass., 33).

On the 12th of August, therefore, the situation of the parties was that the libelants had their claims for the non-delivery of the sulphur, and the shipowners had the sulphur in store and under their

control. The cargo owners were not willing to [352
have the cargo brought forward and to accept it, then, as performance of the original contract; but they were willing to have it forwarded under a new contract, which stated that the freight and the terms and condition of liability, during the voyage, should be those stated in the original bills of lading, that a certain specified disposition should be made of the cargo on its arrival, and that the proceeds of the sale less the costs of sale should be credited against the damages which might be recovered in the four pending suits (fols. 788–789). The shipowner also had an interest in insisting that the cargo should be sold and the proceeds credited against the claims for damages contained in the libels, because he understood those claims in the libels would necessarily be limited to the invoice or declared value of the goods, whichever should be the least (fol. 753); and he had good reason to suppose that the cargo would sell in New York for as much as the invoice value, and that by means of such an arrangement, his liability, if any, for refusing to bring the cargo forward in the ship originally would thus be in effect discharged or reduced to a small sum.

The material clauses of the stipulation of August 12th read as follows:

"It is stipulated and agreed between the parties as follows:

"1. The claimant shall forward the cargo landed *ex Styria* at Port Empedocle, on the first available steamer from that port to New York, and shall deliver the same to the consignees, upon the terms and for the freight specified in the original bill of lading, the consignees to receive the same and to pay the agreed freight on right and true delivery; ***the goods upon arrival to be sold at current market rates and the proceeds, less charges incurred, to be credited on account of the damages, if any, recovered by the libelants.*** * * *

353] "8. This stipulation and anything done by any party under it, shall be deemed to be wholly, *without prejudice* in the pending suits *except as herein provided*" (pp. 197, 198).

It is the omission of the Court to enforce that stipulation or contract between the parties, *in regard to the application of the proceeds of the sale of the cargo*, that occasions this petition for a rehearing.

The difference between the damages that would be recovered by the libelants, under the rule enunciated by this Court in its opinion and under the rule explicitly stated in the stipulation of August 12th, is very great. It may be emphasized by reference to the case of Malcolmson, which involves the largest amount. In the following table (*a*) the damages to be recovered under the rule laid down by the Court appear as they would be claimed by that libelant on the evidence so far taken, while in table (*b*) the damages are shown as they would be under the stipulation of August 12th.

Table (*a*.)

Market value on *Styria's* arrival of—	
500 tons best thirds (fol. 1121) at $30 a ton (fols. 999, 1012)	$15,000 00
1,000 tons best seconds (fol. 1121) at $33 a ton (p. 254)	33,000 00
	$48,000 00
Market value of sulphur realized on sale *ex Abbazia* (fol. 1122)	27,246 00
Difference	$20,754 00

Table (b.) [354

If the damages had been adjusted on the basis of the contract contained in the stipulation of August 12th, they would have been as follows:

Full damages for non-delivery, limited to invoice value (fol. 1122).		$28,500 31
Credit proceeds of sale (fol. 1122)	$27,246 00	
Less weighing	116 12	
	$27,129 88	
		27,129 88
Difference		$1,370 43

These results do not take account of the charges in Sicily that the Court has found should be deducted; but they serve to show the difference between what the shipowner supposed he was securing to himself by the stipulation of August 12th, and the result reached by the Court, without special regard to the effect of that stipulation.

It cannot be supposed either that the shipowners intended to increase their liabilities, by bringing the sulphur forward and delivering it under the terms of the stipulation of August 12th, or that the libelant Malcolmson expected to make $21,000 by means of the stipulation. The result reached is that he has received, in payment of the liability incurred by the ship owner through the breach of the contract, the proceeds of the sale of his sulphur amounting to $27,246, and will be in a position to recover, say, a further $20,754, making together $48,000 on a claim which by the clause of the bill of lading it was agreed should in no event exceed $28,500.31, the invoice value of his consignment.

Such a consequence was surely not intended to follow from the stipulation or the acts done under it.

The stipulation was very explicit in its terms, and contained a provision at the foot:

355] "3. This stipulation and anything done by any party under it shall be deemed to be wholly without prejudice in the pending suits *except as herein provided.*"

It was clearly intended that the stipulation *should prejudice the rights* of the parties to the extent that it varied such rights by its terms. The provision that it should not be otherwise prejudicial was simply intended to mean that the Court should not infer that either party considered he was in the wrong because he did something under the stipulation which might be inconsistent with his contention in the litigation.

If the shipowner had not brought the cargo forward at all, and had been adjudged to pay damages for its non-delivery, the damages would have been limited by the invoice value, and the shipowner would then have been entitled to the sulphur. He could have brought it forward himself and sold it, in this market, for the price at which the libelants sold it, and the proceeds of the sale would have substantially paid the judgments for damages.

A construction of the stipulation of August 12th which would leave the shipowner worse off, because he consented to take a step which was thought to be for the benefit of all concerned, than he would have been if he had rested on what he supposed were his rights under the contracts, cannot be presumed to be one that was contemplated when the stipulation was signed. But, if the rule for damages which the Court has announced is to be adhered to in spite of the stipulation, the shipowners will probably have to pay damages aggregating in the neighborhood of $30,000; while, if they had not forwarded the sulphur, but had paid the damages adjudged for non-delivery, and had then sold the sulphur for their own account, the net loss would have been under $5,000. It cannot be stated with definiteness just how much the damages to be recovered by the different libelants will amount to, because Morgan's case first went to a reference, and the plan of adjust-

ing the damages there adopted having been [356
confirmed, proof of the actual losses in the
other cases was not furnished; but it is believed that
the above estimate is approximately correct.

The shipowner earnestly requests a further hearing on the interpretation of his stipulation of August 12th, executed under the advice of counsel, which it is believed should be a bar to the adoption of such a rule for assessing the damages as has been announced in the opinion.

(2.) It should also be pointed out that the District Judge did not, in this case, actually adjust the damages as partial losses on the basis of the invoice value, as has been supposed by this Court. Though the Judge, in his opinion does in one place speak of a partial loss (fol. 1177), the damages were, in fact, adjusted in accordance with the stipulation, except that an error was committed, as the appellant contends, with regard to the deduction of freight (fol. 1111).

The Commissioner stated and the Court assessed the damages in the Morgan case as follows (fol. 1111):

Invoice value (full damages, as limited by bill of lading)			$4,279 00
Proceeds of sale (credit as per stip.)	$4,513 46		
Weighing	$24 40		
Freight	354 98		
		379 38	
			4,134 08
Balance			$144 92

In this table the invoice value was not taken as the *basis* of the damages, but it was treated as their *limit* under the terms of the bills of lading. Against the total damages so limited, the Court credited the proceeds of sale, under the terms of the stipulation, and then after deducting freight and expenses reached the balance which it was adjudged the shipowners were liable to pay.

357] Therefore, it is submitted, though this Court may disapprove of the construction of the invoice valuation clause, as applied to partial losses in the cases previously decided by Judge Brown, and which he referred to in his decision in this case, nevertheless the real point held in the earlier cases was not in fact involved here, because: (*a*) the libelants elected to treat their losses as total losses, arising from the non-delivery of the goods, as appears by their libel; (*b*) the shipowners and the libelants in their stipulation of August 12 contracted that the cargo brought forward by the ship under the terms of the original bills of lading should be sold for cash, and that the net proceeds of the sale should be credited on the existing claims, if valid; (*c*) the cargo was in fact sold pursuant to that stipulation, and the proceeds of sale were accounted for as credits to be applied to the libelant's claim for damages as for total losses, and not as for partial losses.

Instead of looking at the proceeds of sale only as credits to be applied in the payment of claims, the amounts of which were to be ascertained on a different basis, the Court has inadvertently used them, or permitted their use, for comparison with proceeds that might have been realized in June, and has awarded damages for the difference—a result contrary to the contract embodied in the stipulation of August 12th.

The petitioners, therefore, respectfully pray for a reconsideration of this branch of the cases and that they may be reheard to that end.

April 12, 1900.

AUSTRO-AMERICANA STEAMSHIP COMPANY,
By CONVERS & KIRLIN,
Proctors.

I hereby certify that in my opinion the foregoing application for a rehearing is meritorious, and entitled to the favorable consideration of the Court.

J. PARKER KIRLIN,
Of Counsel.

MORGAN and others (four libels)

vs.

S. S. "STYRIA" (and four cross-libels).

Per Curiam:

There may be a reargument on April 30th, solely on the effect of the stipulation as to bringing forward cargo and action thereunder upon the rights of the parties. It is suggested that for convenience of argument the several parties agree (solely for the purposes of such argument) upon arbitrary sums to represent:

1. Market value of the sulphur here less expenses of sale had the *Styria* reloaded it and brought it forward as soon as the Italian proclamation appeared.

2. Market value of sulphur less expenses of sale when it was actually sold.

3. Invoice value of the sulphur.

4. Freight.

5. Expenses of discharging and reloading at Port Empedocle.

6. Market value of sulphur in warehouse in Sicily immediately after the arrival of the *Styria*.

(Endorsed)—United States Circuit Court of Appeals, Second Circuit.—Morgan & others (four libels) *vs.* S. S. *Styria* (and four cross-libels).—Opinion, *Per Curiam*.—United States Circuit Court of Appeals, Second Circuit.—Filed Apr. 19, 1900.—William Parkin, Clerk.

359] UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

NOS. 137–144—October Term, 1899.

Re-argued May 4, 1900. Decided May 10, 1900.

JAMES L. MORGAN *et al.*, Libelants-Appellants,

vs.

THE STEAMSHIP "STYRIA," her engines, &c., ANTONIO SCOPINICH, Claimant-Appellant.

SCHUYLER L. PARSONS, Libelant-Appellant,

vs.

THE SAME, Claimant-Appellant.

ALFRED S. MALCOMSON, Libelant Appellant,

vs.

THE SAME, Claimant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

Before Judges WALLACE, LACOMBE and SHIPMAN.

JOHN MUNROE *et al.*,
Libelants-Appellants,

vs.

THE SAME,
Claimant-Appellant.

AUSTRO-AMERICANA STEAMSHIP COMPANY, owner of the Steamships "Styria" and "Abbazia,"
Libelant-Appellant,

vs.

3,250 CANTORS OF BRIMSTONE, owned by JAMES L. MUNROE & COMPANY,
Respondent-Appellee.

THE SAME,
Libelant-Appellant,

vs.

4,550 CANTORS OF BRIMSTONE, owned by SCHUYLER L. PARSONS,
Respondent-Appellee.

THE SAME,
Libelant Appellant,

vs.

1,500 TONS OF BRIMSTONE, owned by ALFRED S. MALCOMSON,
Respondent-Appellee.

THE SAME,
Libelant-Appellant,

vs.

100 TONS OF BRIMSTONE, owned by JOHN MUNROE *et al.*,
Respondents-Appellees.

360] Re-argument of this cause (decided April 3, 1900) was had upon the single question as to the effect of the stipulation under which the sulphur was brought forward.

LACOMBE, *Circuit Judge.*—In the former opinion we held the ship in fault and bound to respond for the damages caused by loss of market; and that loss was declared to be the difference between the price the goods actually brought when they reached here, in another steamer of claimant's line, and the price they would have brought had they been sold on the day when they should have arrived. The difference is concededly less than the invoice value. The re-argument has induced no change of opinion on these propositions.

We fail to see that it makes any difference how the sulphur was brought forward. If the claimant failed to bring it, the owner could have withdrawn it from the Sicilian warehouse paying the *Styria's* lien for expenses of discharge, and the freight, and brought it forward himself. Or he might if he chose have sold it in Sicily. It is certainly clear that at the time the stipulation was signed, claimant could not have seized the sulphur and sold it for its own use—a deliberate act of conversion—and in the face of such willful tort could still have insisted on the limitation of liability clause contained in the bill of lading. Such being the situation and the libelants being in a posi-

tion where by application of the rule as to measure of damage above set forth they would be made whole—and only be made whole—for the loss they suffered by the ship's negligence, the claimant being at the same time protected against any liability in excess of the stipulated limit, it is contended that the effect of the stipulation is practically to destroy the libelants' right to relief; so that, although concededly they have lost over $20,000 through the ship's misconduct, they cannot recover anything; while by the same stipulation the ship gives up nothing. When the circumstances under which the stipulation was signed are taken into consideration it appears that its language does not import such a one-sided agreement. The libels had been filed, [361 all claiming damages for non-delivered sulphur at its full market value on the day it should have reached here. No answers had yet been interposed, nor claims made that the damages must be scaled down to the invoice value. When, therefore, the stipulation provided that the proceeds of the sulphur to be brought forward under its terms should be credited on account of the damages, it certainly was not intended that it should be credited twice, once by the application of the rule for determining difference of market values, and again by deducting the amount of such proceeds from the balance found upon applying the rule for ascertaining damages which the transactions and documents required.

The petition to modify the mandate is denied.

J. Parker Kirlin, for the "Styria."
Charles C. Burlingham, for Morgan.
M. H. Regensburger, for Munroe.
Edward B. Hill, for Malcomson.
Latham G. Reed, for Parsons.

362] At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms, in the Post Office Building, in the City of New York, on the 21st day of May, one thousand nine hundred.

Present—Hon. WILLIAM J. WALLACE, Hon. E. HENRY LACOMBE, Hon. NATHANIEL SHIPMAN, } *Circuit Judges.*

JAMES L. MORGAN *et al.*, Libelants-Appellants,

vs.

The Steamship "STYRIA," her engines, &c.,

ANTONIO SCOPINICH, Claimant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed, that the decree of said District Court be and it hereby is reversed, without costs, and cause remanded with instructions to enter a decree in accordance with the opinion of this Court.

It is further ordered, that a mandate issue to the said District Court in accordance with this decree.

E. H. L.

363]

(Endorsed)—United States Circuit Court of Appeals, Second Circuit.—James L. Morgan *et al.*, *vs.* SS. *Styria*.—Order for Mandate.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.

At a Stated Term of the United States Circuit Court of Appeals, for the Second Circuit, held at the United States Court Rooms, in the Post Office Building, in the Borough of Manhattan, City of New York, on the 22d day of May, 1900.

Present--Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

SCHUYLER L. PARSONS

AGAINST

Steamship STYRIA, her tackle, &c., Austro-Americana Steamship Company,
Claimant.

The appeals in the above entitled cause taken by the claimant having come on to be heard, and having been argued by the advocates of the respective parties, and due deliberation having been had in the premises;

Now, on motion of Bowers & Sands, proctors for the libelant, it is

ORDERED, ADJUDGED AND DECREED, that the final decree of the United States District Court for the Southern District of New York be, and the same is, hereby reversed, without costs.

And on like motion, it is

ORDERED that a mandate issue from this Court to the said District Court to take further proceedings

in accordance with this order and the opinion of the Court.

E. H. L.

(Endorsed)—U. S. Circuit Court of Appeals, for the Second Circuit.—Schuyler L. Parsons against Steamship *Styria*, her tackle, &c., Austro-Americana Steamship Company, Claimant.—Original order for Mandate and Notice of Settlement.—Bowers & Sands, Proctors for Schuyler L. Parsons, 31 Nassau Street, New York City, New York.—United States Circuit Court of
365] Appeals, Second Circuit.—Filed May 22, 1900. —William Parkin, Clerk.—Received May 11, 1900, Convers & Kirlin.

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366] At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the Court Rooms, in the Post Office Building, in the City of New York, on the 21st day of May, one thousand nine hundred.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

ALFRED S. MALCOMSON,
Libelant-Appellant,

vs.

The Steamship "STYRIA," her engines, &c.,
ANTONIO SCOPINICH,
Claimant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed, that the decree of said District Court be and it hereby is reversed, without costs, and cause remanded, with instructions to enter a decree in accordance with the opinion of this Court.

It is further ordered, that a mandate issue to the said District Court in accordance with this decree.

E. H. L.

(Endorsed.)—United States Circuit Court of Appeals, Second Circuit.—Alfred S. Malcomson *vs.* SS. *Styria.*—Order for Mandate.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk. [367

368] At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms, in the Post Office Building, in the City of New York, on the 21st day of May, one thousand nine hundred.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

JOHN MUNRUE *et al.*,
Libelants-Appellants,
vs.
The Steamship "STYRIA," her engines, &c.
ANTONIO SCOPINICH,
Claimant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed, that the decree of said District Court be and it hereby is reversed, without costs, and cause remanded with instructions to enter a decree in accordance with the opinion of this Court.

It is further ordered, that a mandate issue to the said District Court in accordance with this decree.

E. H. L.

369]

(Endorsed)—United States Circuit Court of Appeals, Second Circuit.—John Munroe *et al. vs.* SS. *Styria*.—Order for Mandate.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.

At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, held in the United States Court Rooms, in the Federal Building, in the City of New York, Borough of Manhattan, on the 19th day of May, 1900.

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

AUSTRO-AMERICANA STEAMSHIP COMPANY,
Libellant-Appellant,

AGAINST

3,250 CANTARS OF BRIMSTONE, owned by James L. Morgan and others, ex-Steamship *Abbazia*.

Order for Mandate.

The appeal by the libelant in the above entitled cause having come on to be heard, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises,

Now, on motion of Convers & Kirlin, proctors for the Austro-Americana Steamship Company, libelant, it is

ORDERED, ADJUDGED AND DECREED, that the final decree of the District Court for the Southern District of New York herein, be and the same is hereby reversed, without costs. And, on the like motion, it is further

ORDERED, that a mandate issue from this Court to the said District Court to take further proceedings

in accordance with this order and the opinion of the Court.

E. H. L.

371]

(Endorsed)—U. S. Circuit Court of Appeals, Second Circuit.—Austro-Americana S. S. Co., Liblt.-Applt., against 3,250 Cantars of Brimstone, owned by James L. Morgan and others, ex S. S. *Abbazia*.—Order for mandate and notice of settlement.—Convers & Kirlin, Proctors for Liblt.-Applt., 5 Beekman st., New York, N. Y.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.—Due service of a copy of the within and of the foregoing notice is admitted this 17th day of May, 1900.—Cowen, Wing, Putnam & Burlingham, Procs. for Clt.

372] At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, held in the United States Court Rooms, in the Federal Building, in the City of New York, Borough of Manhattan, on the 19th day of May, 1900.

Present—Honorable WILLIAM J. WALLACE,
Honorable E. HENRY LACOMBE,
Honorable NATHANIEL SHIPMAN,
Circuit Judges.

AUSTRO-AMERICANA STEAMSHIP COMPANY, Libelant-Appellant, AGAINST 4,550 CANTARS OF BRIMSTONE, owned by Schuyler L. Parsons, ex Steamship "ABBAZIA."	Order for Mandate.

The appeal by the libelant in the above entitled cause having come on to be heard, and having been

argued by the advocates for the respective parties, and due deliberation having been had in the premises;

Now on motion of Convers & Kirlin, proctors for the Austro-Americana Steamship Company, libelant, it is

ORDERED, ADJUDGED AND DECREED, that the final decree of the District Court for the Southern District of New York herein, be, and the same is hereby reversed, without costs. And on the like motion it is further

ORDERED, that a mandate issue from this Court to the said District Court to take further proceedings in accordance with this order and the opinion of the Court.

E. H. L.

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(Endorsed)—U. S. Circuit Court of Appeals, Second Circuit.—Austro-Americana S. S. Co., Liblt.-Applt., against 4,550 Cantars of Brimstone, owned by Schuyler L. Parsons, ex S. S. *Abbazia*.—Order for Mandate and Notice of Settlement.—Convers & Kirlin, Proctors for Liblt.-Applt., 5 Beekman Street, New York, N. Y.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.—Copy this day received, May 17, 1900.—Bowers & Sands.

374] At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, held in the United States Court Rooms, in the Federal Building, in the City of New York, Borough of Manhattan, on the 19th day of May, 1900.

Present—Honorable WILLIAM J. WALLACE,
Honorable E. HENRY LACOMBE,
Honorable NATHANIEL SHIPMAN,
Circuit Judges.

AUSTRO-AMERICANA STEAMSHIP COMPANY, Libelant-Appellant, AGAINST 1,500 TONS OF BRIMSTONE, ex-Steamship "ABBAZIA."	Order for Mandate.

The appeal by the libelant in the above entitled cause having come on to be heard, and having been argued by the advocates for the respective parties, and due deliberation having been had in the premises;

Now, on motion of Convers & Kirlin, proctors for the Austro-Americana Steamship Company, libelant, it is

ORDERED, ADJUDGED AND DECREED, that the final decree of the District Court for the Southern District of New York herein be, and the same is hereby reversed, without costs. And on the like motion it is further

ORDERED, that a mandate issue from this Court to the said District Court to take further proceedings

in accordance with this order and the opinion of the Court.

E. H. L.

[375

(Endorsed)—U. S. Circuit Court of Appeals, Second Circuit.—Austro-Americana S. S. Co., Liblt.-Applt., against 1,500 Tons of Brimstone, ex S. S. *Abbazia*.—Order for Mandate and Notice of Settlement.—Convers & Kirlin, Proctors for Liblt.-Applt., 5 Beekman St., New York. N. Y.—United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.—Received a copy of the within May 17, 1900. Sullivan & Cromwell.

[376

At a Stated Term of the United States Circuit Court of Appeals for the Second Circuit, held in the United States Court Rooms, in the Federal Building, in the City of New York, Borough of Manhattan, on the 19th day of May, 1900.

Present—Hon. WILLIAM J. WALLACE, Hon. E. HENRY LACOMBE, Hon. NATHANIEL SHIPMAN, } *Circuit Judges.*

AUSTRO-AMERICANA STEAMSHIP COMPANY, Libelant-Appellant,

AGAINST

100 TONS OF BRIMSTONE owned by John Munroe *et al.*, ex-Steamship "ABBAZIA."

Order for Mandate.

The appeal by the libelant in the above entitled cause having come on to be heard, and having been

argued by the advocates for the respective parties, and due deliberation having been had in the premises;

Now on motion of Convers & Kirlin, proctors for the Austro-Americana Steamship Company, libelant, it is

ORDERED, ADJUDGED AND DECREED, that the final decree of the District Court for the Southern District of New York herein, be, and the same is hereby reversed, without costs. And on the like motion it is further

ORDERED, that a mandate issue from this Court to the said District Court to take further proceedings in accordance with this order and the opinion of the Court.

E. H. L.

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(Endorsed)—U. S. Circuit Court of Appeals, Second Circuit.—Austro-Americana S. S. Co., Liblt.-Applt., against 100 Tons of Brimstone owned by John Munroe *et al.*, ex S. S. *Abbazia*.—Order for Mandate and Notice of Settlement.—Convers & Kirlin, Proctors for Liblt.-Applt., 5 Beekman St., New York, N. Y.--United States Circuit Court of Appeals, Second Circuit.—Filed May 22, 1900.—William Parkin, Clerk.—State, City and County of New York, ss.:—William Schnaufer, Jr., being duly sworn, deposes and says that he is a clerk in the office of Convers & Kirlin, proctors for the libelant herein, and that on the 17th day of May, 1900, he served a copy of the within on Stern & Rushmore, proctors for claimant of brimstone, by leaving the same with the person in charge of their office, No. 40 Wall St., New York, between the hours of 12 and 2 P. M.—Sworn to before me this 19th day of May, 1900. W. Schnaufer, Jr.—James T. Kilbreth, Notary Public, N. Y. Co.—[Seal].

UNITED STATES OF AMERICA, Southern District of New York, } ss.: [378

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 377 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of James L. Morgan *et al.* (four libels) against Austro-Americana Steamship Company (and four cross-libels), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 23d day of May, in the year of our Lord one thousand nine hundred and of the Independence of the said United States the one hundred and twenty-fourth.

WM. PARKIN,
Clerk.

[SEAL.]

(Documentary stamp.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which James L. Morgan *et al.* are appellants and The Steamship "Styria," her engines, &c., Antonio G. Scopinich, claimant, is appellee, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 300, October term, 1900. The Steamship "Styria," &c., *vs.* James L Morgan *et al.* Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 19, 1900. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ANTONIO G. SCOPINICH, Claimant of the Steamship Styria, Her Engines, etc., Appellant,
against
JAMES L. MORGAN ET AL., Appellees.

It is hereby stipulated and agreed that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States, with the application for a writ of certiorari herein, may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 16th of October, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ.

Dated New York, October 20th, 1900.

COWEN, WING, PUTNAM & BURLINGHAM,
Proctors for James L. Morgan et al.
CONVERS & KIRLIN,
Proctors for Antonio G. Scopinich.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, November 19th, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 19, 1900. C. & K.]

[Endorsed:] United States circuit court of appeals, second circuit. James L. Morgan *et al. v.* S. S. "Styria." Return to writ of certiorari.

[Endorsed:] File No., 17,785. Supreme Court U. S., October term, 1900. Term No., 300. The Steamship Styria, &c., petitioner, *vs.* James L. Morgan & *al.* Writ of certiorari and return. Filed Nov. 23, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Schuyler L. Parsons is appellant and The Steamship "Styria," her engines, &c., Antonio G. Scopinich, claimant, is appellee, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 301, October term, 1900. The Steamship "Styria," &c., *vs.* Schuyler L. Parsons. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 16, 1900. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ANTONIO G. SCOPINICH, Claimant of the Steamship Styria, Her Engines, etc., Appellant,
against
SCHUYLER L. PARSONS, Appellee.

It is hereby stipulated and agreed that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States, with the application for a writ of certiorari herein, may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 16th of October, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ.

Dated New York, October 20th, 1900.

BOWERS & SANDS,
Proctors for Schuyler L. Parsons.
CONVERS & KIRLIN,
Proctors for Antonio G. Scopinich.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under the direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, November 16, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled 16th Nov., 1900. C. & K.]

[Endorsed:] United States circuit court of appeals, second circuit. Schuyler L. Parsons *v.* S. S. "Styria." Return to writ of certiorari.

[Endorsed:] File No., 17,786. Supreme Court U. S., October term, 1900. Term No., 301. The Steamship "Styria," &c., petitioner, *vs.* Schuyler L. Parsons. Writ of certiorari & return. Filed Nov. 17, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which Alfred L. Malcolmson is appellant and The Steamship "Styria," her engines, &c., Antonio G. Scopinich, claimant, is ap-

pellee, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 302, October term, 1900. The Steamship "Styria," &c., *vs.* Alfred S. Malcolmson. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 19, 1900. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ANTONIO G. SCOPINICH, Claimant of the Steamship Styria, Her Engines, etc., Appellant,
against
ALFRED L. MALCOLMSON, Appellee.

It is hereby stipulated and agreed that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States, with the application for a writ of certiorari herein, may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 16th of October, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ.

Dated New York, October 20th, 1900.

SULLIVAN & CROMWELL,
Proctors for Alfred L. Malcolmson.
CONVERS & KIRLIN,
Proctors for Antonio G. Scopinich.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction

of counsel for the appellant said stipulation is certified as a return to this writ.

New York, November 19th, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 20. C. & K.]

[Endorsed:] United States circuit court of appeals, second circuit. Alfred S. Malcolmson *v.* S. S. "Styria." Return to writ of certiorari.

[Endorsed:] File No., 17,787. Supreme Court U. S., October term, 1900. Term No., 302. The Steamship "Styria," &c., petitioner, *vs.* Alfred S. Malcolmson. Writ of certiorari and return. Filed Nov. 23, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which John Munroe *et al.* are appellants and The Steamship "Styria," her engines, &c., Antonio G. Scopinich, claimant, is appellee, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 16th day of October, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 303, October term, 1900. The Steamship "Styria," &c., *vs.* John Munroe *et al.* Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 19, 1900. William Parkin, clerk.

United States Circuit Court of Appeals for the Second Circuit.

ANTONIO G. SCOPINICH, Claimant of the Steamship Styria, Her Engines, etc., Appellant,
against
JOHN MUNROE ET AL., Appellees.

It is hereby stipulated and agreed that the transcript of record heretofore certified to the Supreme Court by the clerk of this court and filed in the office of the clerk of the Supreme Court of the United States, with the application for a writ of certiorari herein, may be taken as the return to the writ issued by said Supreme Court to said circuit court of appeals under date of the 16th of October, 1900, and that this stipulation may be certified to the Supreme Court by the clerk of this court as and for the return to the said writ.

Dated New York, October 20th, 1900.

STERN & RUSHMORE,
Proctors for John Munroe et al.
CONVERS & KIRLIN,
Proctors for Antonio G. Scopinich.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the appellant said stipulation is certified as a return to this writ.

New York, November 19th, 1900.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 20, 1900. C. & K.]

[Endorsed:] United States circuit court of appeals, second circuit. John Munroe *et al. v.* S. S. "Styria." Return to writ of certiorari.

[Endorsed:] File No., 17,788. Supreme Court U. S., October term, 1900. Term No., 303. The Steamship Styria, &c., petitioner, *vs.* John Munroe *et al.* Writ of certiorari and return. Filed Nov. 23, 1900.

Petitions for Cross-writs of Certiorari.

Supreme Court of the United States.

Nos. 300, 301, 302, & 303, October Term, 1900.

JAMES L. MORGAN ET AL., Petitioners,
vs.
AUSTRO-AMERICANA STEAMSHIP COMPANY, Owner, &c.

SCHUYLER L. PARSONS, Petitioners,
vs.
SAME.

ALFRED S. MALCOMSON, Petitioner,
vs.
SAME.

JOHN MUNROE ET AL., Petitioners,
vs.
SAME.

It is hereby stipulated and agreed that the transcript of record heretofore certified to this court by the clerk of the circuit court of appeals for the second circuit and filed in the office of the clerk of this court in the suits of Antonio G. Scopinich, claimant of the steamship Styria, petitioner, against James L. Morgan and others, respondents, Nos. 300, 301, 302, and 303, October term, 1900, may be taken as the return to the cross-writ of certiorari granted by this court herein.

Dated New York, November 23d, 1900.

HARRINGTON PUTNAM,
For Morgan et al.
JOHN M. BOWERS, *For Parsons.*
W. J. CURTIS, *For Malcomson.*
MELVILLE H. REGENSBURGER,
For Munroe et al.
J. PARKER KIRLIN,
For Austro-Americana S. S. Co.

[Endorsed:] Stipulation as to returns to cross-writs of certiorari.
[Endorsed:] File No., 17,785, &c. Supreme Court U. S., October term, 1900. Term No., 300, &c. The Steamship "Styria," &c., petitioner, *vs.* Jas. L. Morgan *et al.* Stipulation as to returns to cross-writs of certiorari. Filed Nov. 24, 1900.